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ABSTRACT

Featuring a mock trial tested in the District of Columbia, the objective of this manual is to help students learn more about the constitutional guarantee of trial by jury. Prepared as five separate lessons, the manual examines one alternative to the jury system--trial by ordeal; traces the development of the guarantee of trial by jury; explores the jury selection process; describes and explains the characteristics of a trial and the role of juries; and provides information and materials for a mock trial, Vickers v. Hearst. Each lesson contains objectives, background information for teachers, activities and handouts for students, and an annotated bibliography. Appendices direct those interested in law-related education programs to additional sources of information. (TSV)

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WHEN JUSTICE IS UP TO YOU

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Celebrating America's Guarantee of TRIAL BY JURY

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When Justice Is Up To You was developed with the indispensable help of the Honorable Ricardo Urbina, Associate Judge of the Superior Court of the District of Columbia; faculty member Patricia Quann and students Luciana Burroughs, TeAnne Coleman, Celia Holland, Brian Settles, and Shareese Thompson, all of the Edward Duke Ellington School of the Arts in Washington, D.C.; trial lawyers Bob Gibbins, of Texas, Roxanne Barton Conlin, of Iowa, and Richard Hailey, of Indiana; and the Auxiliary of the Association of Trial Lawyers of America.

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WHEN JUSTICE IS UP TO YOU

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Celebrating America's Guarantee of TRIAL BY JURY

Developed in Commemoration of
the 200th Anniversary of the Bill of Rights

by

Association of Trial Lawyers of America
National Institute for Citizen Education in the Law
D.C. Street Law Project

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NOTES

WHY LEARN ABOUT TRIAL BY JURY?

On December 15, 1991, Americans marked the 200th anniversary of the Bill of Rights — and the vital jury process it guarantees. The anniversary celebrated the fact that justice by the people, for the people, still works, even after 200 years.

The jury concept itself has been a powerful voice for justice for over 2,000 years. When juries speak, Winston Churchill wrote, "law flows from the people."

Thomas Jefferson called the jury process the best of all possible safeguards for the person, property and reputation of every citizen. It was, in fact, the verdict of courageous jurors that established the right to a free press in America.

Many of today's students will some day serve on juries. For most, it will be their principal way, other than by voting, of directly participating in the democratic process. Through the jury process, the students will, in time, reflect the collective conscience of their communities, contributing what the late U.S. Supreme Court Justice Benjamin Cardozo called "the rough and ready tests supplied by their experience of life" to reach decisions that are just and fair. In contrast to other countries, where judges alone often decide issues, America's jurors help balance the scales of justice.

Jurors keep law in the U.S. from getting too far from the people, preserving a guarantee of freedom and democracy that many in the world are still struggling to achieve.

The right to trial by jury is a fundamental principle of the American legal system, secured by many state constitutions and by the Sixth and Seventh Amendments to the U.S. Constitution. It preserves a right rooted deep in history that allows Americans to have their cases, civil and criminal, heard not by government officials but by peers within the community. The jurors — those who must cull the facts from the diverse testimony and apply the law to them — have an opportunity to offer great service, but they also have an awesome responsibility. The more jurors understand their role, the better they will be able to fulfill their responsibilities.

The more than five million Americans called for jury duty each year determine guilt and innocence, safety and security, life and death. Jurors from all walks of life — factory workers, teachers, business executives, homemakers — can and do, through prudent deliberation, consider whether the most powerful corporation or influential citizen has acted justly. A jury's decisions can be overturned by the courts or the legislature, but that rarely happens.

Are jurors really capable of sorting out complex issues? A Federal Judicial Center survey of complex cases stated that, almost without exception, judges and lawyers agreed that jurors "made the correct decision or that the jury had had no difficulty applying the legal standards to the facts."

Federal Judge Jim R. Carrigan, of Colorado, cited jurors as being "a cross-section of people who bring to their task diverse educational, social, economic, and professional experiences providing wisdom as fact-finders not available to a single judge. Most important," said Judge Carrigan, "is that the jury keeps the ultimate power of society in the hands of the people — the safest place for it." When citizens serve on a jury, justice is indeed up to them.

When Justice Is Up To You is designed to bring this proud American heritage directly to the classroom.

ABOUT THIS MANUAL

Through this manual, students can learn about America's guarantee of trial by jury by experiencing it themselves — either in the classroom or in a larger public forum.

The case of *Vickers v. Hearst*, detailed later, was tested in a mock trial at Georgetown University Law Center in which 400 high school students from Washington, D.C. area schools served as jurors. After hearing the evidence and the arguments of counsel, the audience broke up into small groups of jurors to deliberate and render verdicts. The students took their duties seriously; the depth of their deliberations was impressive. As a result, it was decided to make the opportunity available nationwide.

The course begins in the mists of history with trial by ordeal, and then foreshadows modern juries by introducing character witnesses who vouch for the accused. It then moves ahead to practical experiences reflecting today's system of impartial jurors. Each lesson provides objectives, background information for the teacher, at least one supporting activity with student handouts, and a bibliography which suggests further teacher and student reading. Because activities are optional, the course can be adapted to various time constraints.

The course is designed to culminate in a mock trial that allows students to hear testimony, deliberate with the help of the standard instructions from the judge, and bring in a verdict. This manual provides materials for the case of *Vickers v. Hearst,* a substantial civil case concerning drinking and driving, a particularly timely national issue. Government figures indicate that, in 1989 alone, over 7,000 "drinking drivers" under the age of 25 were involved in fatal accidents. Nearly 5,000 of these drivers were age 21 or younger.

Classroom-tested materials for abbreviated mock trials can be found in *Street Law: A Course in Practical Law* and in the *Street Law Mock Trial Manual.* (See Bibliography, Lesson 4.)

When Justice Is Up To You also suggests methods other than a mock trial for introducing students to the jury system and the complexities and importance of jury deliberation.

Local lawyers, judges, legal organizations, and law schools are often pleased to help students learn about the law. Sources of help and information are listed in the Appendices.

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THE NOT-SO-GOOD OLD DAYS

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OBJECTIVES

As a result of this lesson, students should be able to

○ Describe a trial by ordeal and give examples *Activity 1A*;

○ Articulate differences between a system of justice based on trial by ordeal and today's system of trial by jury *Activity 1A*;

○ Generally describe the historical basis for the requirement that a jury be impartial *Activity 1B*;

○ Discuss the historical progression which led to our present jury system *Activity 1B*;

○ Generally describe the main components of the American jury system *Activity 1B*; and

○ State some of the benefits and disadvantages of today's jury system as compared to historical juries *Activity 1B*.

BACKGROUND FOR TEACHERS

The U.S. jury system has its source in English history. Before there were juries, there were three general methods of "trial" in England. The first, the **wager of law**, simply required the accused person to take an oath, swearing to a fact. In those days, a person's oath carried great weight. In fact, the word "jury" derives from the term "jurare" which means to swear, to take an oath. Those with good reputations who were accused of crime had only to swear that they were innocent to be acquitted.

If others swore against the accused, however — in effect challenging the truth of the accused's oath — a **compurgation** was necessary. The accused had to bring in 11 supporters called **compurgators**, making 12 people in all who would be willing to take an oath on behalf of the accused. The **compurgators** did not swear that what the accused said was true. They served more as character witnesses, swearing that the accused was considered a credible person. If the accused was found guilty, the compurgators might also be punished because they were then implicated in the defendant's guilt.

An accused who was a repeat offender, or who was unable to find enough compurgators willing to swear to good character, would be subjected to a **trial by ordeal**, some sort of physical test, the results of which were supposed to indicate guilt or innocence. Unfortunately, the trials were usually designed so that, in proving innocence, the physical ordeal often resulted in bodily harm or even death to the accused.

For instance, in a **trial by hot water**, a ring might be suspended by a string in a cauldron of boiling water, either wrist-deep or elbow-deep, depending upon the severity of the crime. The accused was first "cleansed" by prayer and fasting and then was instructed to reach into the boiling water to grab the ring. If the accused's hand and arm were burned, that was considered a sign of guilt. If not burned, the obvious miracle was treated as a sign of innocence.

In a **trial by cold water**, used in the American colonies at the time of the Salem witch trials, the accused was bound and placed in a body of water that had been purified by prayer. An accused who sank was considered innocent because the water would "accept" one who was pure; floating indicated that the accused's body was polluted by sin and the water was rejecting it. Apparently the object of this ordeal was not always to drown the innocent or the guilty — the accused might be removed from the water after sinking or floating for a while.

There were various types of **trial by fire**. Some entailed having the accused show innocence by either walking across hot coals or holding a white-hot iron rod. In these trials, the accused was guilty if burned or innocent if not burned. Sometimes the test was not whether the person was burned, but how the burn healed after a certain period of time. For instance, if the burn healed well after a few days, it was a sign of innocence because the body was "clean." But if the wound showed signs of infection, it was considered a sign that the body was defiled by evil.

Not all trials by ordeal were so dramatic. For example, one trial consisted only of taking a large piece of bread from an altar and eating it. An accused who could eat the bread without difficulty was considered innocent; choking or gagging was thought to show an evil presence in the body rejecting the bread. Another less dramatic trial required the accused to wear a blindfold and choose between two pieces of wood, one of which had a cross drawn on it. If an accused selected the one with the cross it was considered that divine intervention had proved innocence.

One common aspect of all of the trials by ordeal was that the outcomes were often a matter of chance or placed the accused in a "no-win" situation. To prove innocence, an accused had to risk death or serious bodily injury. Yet, since survival was often considered a sign of guilt, an accused lucky enough to survive the ordeal was often immediately judged guilty and put to death.

Most of these trials had a religious context and were conducted by clergymen or other church officials. Most were preceded by purifying prayer for either the accused or the object used in the trial — water, bread, etc. If the trial required purification of the body before the ordeal, the accused was often sequestered and forced to fast and pray for up to three days prior to the trial.

These kinds of trials had no juries, and often citizens did not want to be chosen for "jury duty" as compurgators because they faced the possibility of punishment for "incorrect" verdicts. As trial by jury began to develop, the situation for the jurors did not improve much. When the courts were under royal control, the jurors were often punished if they decided against the king. Often, "incorrect" jurors had their property seized, were imprisoned, or were separated from their families as punishment for not "properly" fulfilling their duties as jurors. And since the jurors were still considered witnesses, they were also subject to punishment for perjury.

Trial by jury did not fully come into being until the trial by ordeal was abolished. The move to jury trial took longer for criminal matters than for civil cases, since trials by ordeal were used mainly to resolve common crimes or offenses against the king, the state, or the church. Corrupt rulers were known to "plant" witnesses or jurors to manipulate the outcomes of trials. In order to guard against this, the church began to support the principle that jurors should have no interest in the case at issue. With the church's influence, the courts began to insist on impartiality in jurors. The separation of the roles of witness and juror, and the desire for protection against royal manipulation, combined to spark the evolution of the system of trial with an impartial and unbiased jury.

New developments brought additional changes to the nature of the jury. For instance, when attorneys began to bring in witnesses to corroborate facts in a case, it was no longer necessary for the jurors to know the accused. And witnesses began to testify before the judge as well as the jury, not before the jury alone. Since both the judge and the jury were to hear the facts, it became more desirable for all persons to be at the same place, hear the same facts, and base their decisions solely upon the information presented in open court, instead of having some persons on the jury who knew more about the case than others. Gradually, juries came to decide only questions of fact, while judges ruled on questions of law. (See Lesson 4.)

By the time the colonists were settled in America, the right to **trial by jury** was considered essential. British rulers attempted to deny the colonists this right but were met by strong resistance. The importance and value the colonists placed on this right was clearly evidenced in the Declaration of Independence, and in the Sixth and Seventh Amendments to the U.S. Constitution. Today the jury is a mainstay of America's legal system.

A CLASSROOM ORDEAL

ACTIVITY 1A

MATERIALS
- ○ Colored candy (jawbreakers work best)

To spark your students' interest, conduct a mini-trial by ordeal. You might begin the class by explaining that you will be starting a new unit on the jury system. Interrupt your speech by accusing a student or a group of students of some "crime." For instance, you or a student can accuse several students of making a derogatory remark about you, or perhaps a student, the principal or the school that was inadvertently overheard. Since it was fabricated, the accusation will be denied, so you can call for a trial to determine the students' guilt or innocence.

The accused students should each be given a piece of hard candy and told to place it in the mouth for one minute without biting on it. During the time they are subjected to this "ordeal," you can explain to the rest of the class that at the end of the minute, they are to stick out their tongues. If their tongues turn color, it is because evil words have come out of their mouths so they are guilty as charged. If no color results, they are innocent. One piece of candy should not leave noticeable color, while the others are brightly colored.

Now that you have the students' attention, you can begin a discussion about trials by ordeal, what they were about, and why they were conducted. Ask students if they know of any examples. The Salem witch trials may be mentioned. You can discuss the historical significance of these trials, and describe a few of the more dramatic ones. Then you can lead into a discussion of how they differ from today's system of trial by jury.

ON TRIAL — YOUR CLASSROOM TALK SHOW

ACTIVITY 1B

MATERIALS

- ○ Real or simulated microphone
- ○ Chairs for "guests" and "audience"
- ○ A sign with the title *On Trial*

Arrange your classroom to resemble a TV talk show set with the teacher as anchor. If possible, recruit other adults to serve as guests; if not, choose students from your class. Videotaping the class session will add to the authenticity and make it more exciting for the students.

This activity can be successful with just one guest to play the role of "legal historian," but ideally there will also be a lawyer or judge to speak for our current system of trial by impartial jury, and a lawyer or judge to speak for the historical system where jurors had personal knowledge of the case.

The script can begin like this:

Anchor:

"Hi, my name is ____________. Welcome to another edition of *On Trial*, the show that deals with the legal issues that affect us all. The topic for today's show is: 'The Impartial Jury — Does Publicity Interfere with Jury Impartiality?' Please welcome our first guest, ______________, a legal historian from _____________ State University.

"Good afternoon, ____________. The first question I want to ask you is what *is* an impartial jury?"

The historian can explain that an impartial jury means that the jurors will make up their own minds about a case based on the evidence before them. In other words, any prior knowledge of the case, or whatever biases or beliefs they may have, will not materially affect their ability to decide the case objectively. They will be able to make an objective decision based solely upon what they hear and see in the courtroom.

Urged on by questions from the anchor, the historian can trace the history of the jury. See "Background for Teachers" for this lesson and Handout 1.

The anchor can then move on to the topic of the discussion — Does publicity interfere with jury impartiality? The anchor can pose the following example:

> The police are in the process of approaching a person for a criminal offense. The person resists and the police respond with considerable force. The scene is videotaped by a passer-by and shown widely on television news. Still pictures from the videotape are featured in newspaper stories. The police officers are charged with assault. Should people who have seen, heard or read about the incident be excluded from jury service?

The anchor can introduce the other guests and allow them to make their preliminary arguments. Handouts 2 and 3 will brief the guests on their roles. This segment might begin with the anchor asking the guest favoring jurors with prior knowledge of a case to explain why they might make good jurors. The guest favoring the exclusion of jurors with prior knowledge can then be allowed to rebut, either during the course of the discussion with the other guest or afterwards. In either case, the anchor keeps the discussion moving with questions that bring out the basic ideas.

The anchor and guests can invite questions from the audience — the students — either throughout the interviews or upon their conclusion. The show can conclude with a class discussion about the issue. The show can run for as long as your class period will allow.

LAW, TRADITION & COMMON SENSE

ACTIVITY 1B, Handout 1

Before each trial at which he presides, Florida state court judge Richard Yale Feder speaks to the jury. "Your job will be more difficult and important than mine," he tells jurors. "I will not decide this case, you will."

Like the jury system itself, Judge Feder's words reflect the law, tradition and common sense.

Americans are fortunate to have the right to trial by a jury of fellow citizens. Based on the democratic belief that a community's **collective wisdom** is the best judge of the actions of others in the community, juries represent the most open kind of democratic government. Only a government that trusts the people's judgment can support an impartial jury system like ours.

EVERY CITIZEN A JUROR

"Justice" was not always as fair as it is today. Early attempts at justice were often cruel. As far back as 1000 B.C., ancient societies, and later the church, conducted "trial by ordeal." Hot irons, boiling water and dunking the accused in cold water were used to determine guilt or innocence. Sometimes simply surviving the ordeal was considered "proof" that the accused was guilty.

Today's jury system evolved from ancient Greece where, about 400 B.C., governors of Athens asked males over 30 to hear the arguments of alleged wrongdoers. As Aristotle explained it, these men were counseled to apply their understanding of "general justice," not to interpret the law. Huge juries of hundreds of volunteers would listen to evidence from both sides and reach a verdict. The Greeks believed jury trials were the best way to ensure that a community's sense of justice — not just the leanings of one person — would prevail.

POWERFUL VOICE FOR CHANGE

Juries express the voice of the population — and that voice can be loud enough to force change. A handful of English barons recognized this when, in 1215, they put a sword to the throat of King John and forced him to sign the Magna Carta. On the grassy plain of Runnymede, the barons received many freedoms, including the right to a trial not by the king but by their equals.

Four centuries later, William Penn was charged with causing an unlawful assembly. Refusing to find him guilty of that charge, his jury was imprisoned and denied food and water. Jury members still refused to convict him and were finally released. Penn went on to lead the cause of justice in the New World and to found the Commonwealth of Pennsylvania, strengthening the reputation of the jury as a shield against government wrongdoing.

British attempts to deny colonists the right to trial by jury turned out to be a serious mistake. The colonists responded to this and other affronts with the bold "Declaration of Causes and Necessities for Taking Up Arms" in 1775. The Declaration of Independence and the Sixth and Seventh Amendments to the U.S. Constitution later reaffirmed the right to an impartial jury of fellow citizens — a cornerstone of democracy today. According to constitutional scholars, it was the Constitution's absence of specific protection for civil jury trial that led directly to the adoption of the Bill of Rights.

JURIES TODAY

Just as juries evolved from the medieval compurgators and the Greek juries before them, they continue to evolve. At the time of the American revolution, it was still common for juries to answer some questions of law as practiced in their communities. In those days there was far less specialization of all forms of knowledge than there is today. At the present time juries are firmly limited to questions of fact by jury instructions and the guidance of trial judges who play an active part in proceedings.

The citizens who sit on juries have also changed considerably. Women were disqualified from serving as jurors by law in every state until 1898, and it was not until 1975 that the U.S. Supreme Court held that the systematic exclusion or exemption of women from the jury summoning process was unconstitutional. Until the awakening of America's civil rights movement, it was common for members of minority groups to be excluded from jury service, either through the summoning process or during actual jury selection. Today, a range of state laws and U.S. Supreme Court decisions protect the right of all citizens to serve as jurors unless excluded because of a true inability to serve or a criminal record. In this sense, changes in the jury system have reflected America's emerging standards of fairness and justice.

Another development affecting juries is the explosion of mass communication in the 20th century. Widespread news coverage of criminal prosecutions and civil lawsuits in some cases makes it necessary to pick jurors who have not seen media accounts of the matters they will judge. And it is common for jurors to be instructed not to read or watch coverage of their cases until *after* their verdict is rendered.

Finally, in present times, juries must sometimes decide lengthy and complex cases. Are jurors really capable of handling this responsibility? "The capabilities of jurors, perhaps not as individuals, but as a group, appear to extend to cases of the greatest complexity. Critics who think otherwise have not been able to find a single research document or a single case that convincingly backs their view. The burden of proof is on the critics." (Guinther, *The Jury in America*, Facts on File Publications, 1988.)

SPEAKING OUT ON SAFETY

Juries are still a powerful voice for change and safety. Thanks to juries, poorly designed and dangerous toys, medicines, equipment, appliances, vehicles and other consumer goods have been pulled from the stores, redesigned and made safer. Asbestos causes an estimated 20,000 cancer deaths a year. But only after a jury found that a manufacturer had failed to alert employees to the known dangers of asbestos was there federal legislation to remove it from all public buildings.

Because of a jury, federal flammability standards are now higher, and fewer children are badly burned because their clothes erupt in flames. When juries speak, they pack a powerful and effective message for those who would abuse the public trust. We're all safer because of them.

BUILDING A JURY

Adult U.S. citizens representing all races, religions, occupations, and temperaments can become jurors, and more than five million Americans are called for jury duty every year. To build a jury, a jury commission or town official randomly selects names from such sources as voter lists, tax rolls, telephone directories, driver's license registrations, and utility lists. In some states, jurors can volunteer for service. Those selected receive a **summons** to report for jury duty on a specific date.

When they arrive in court, potential jurors are questioned by a judge, a lawyer, or both, through a process called **voir dire**, a French phrase translated as "to speak the truth." The voir dire process gives the judge and attorneys a chance to choose jurors who are not prejudiced. It is important that jurors not know the lawyers or each other. It is also important that they not have strong opinions about the issues — or premature views about the defendant's guilt or innocence.

The number of jurors selected tended to be 12 for at least 800 years, since the time of England's Henry II. However in recent years, the number of jurors has been 6, 8 or 10 in some states.

Once the jury is selected, the judge explains the jury process. After that, the floor belongs to the lawyers. There are generally two — one for each side. Each researches the facts, builds a case, and brings in witnesses and evidence so that the jury can determine the facts. The judge presides over the trial, ensuring that it unfolds properly and fairly, sometimes stopping the action to make sure the process is clear and just. Jurors then convene in the jury room to **deliberate**. After considering the facts carefully, they reach a "determination" or **verdict**. If the jury cannot reach a verdict, the trial may have to be repeated.

In most criminal cases, jury verdicts must be unanimous. While unanimous verdicts may not be required in civil cases, at least 75 percent of the jurors are usually expected to agree.

THE COMMUNITY'S "COLLECTIVE CONSCIENCE"

Like all other institutions, juries can make mistakes, but the system has several built-in remedies. For example, trial judges may refuse to accept the verdict in a civil case. They also have the authority to reduce or, in a few states, to increase the award. At the request of the parties, an **appeals court** — a higher court that reviews cases when the lower court decision is in question — can **reverse** the verdict. No judge or appeals court can reverse a "not guilty" verdict in criminal cases because of the constitutional prohibition against **double jeopardy** (being tried twice for the same offense). Trial judges or appeals courts can reverse a conviction of guilt if they believe justice has not been served. In some cases the legislature can even change the law if it sees it being applied by juries in unexpected ways.

Juries are the "collective conscience" of our communities. Juries call upon the sound judgment and character of our neighbors, friends and relatives to decide what is truth and what is fair compensation for those who have been wronged. Juries bring an openness to the courtroom. And, unlike other institutions, juries have no ambition. They want nothing for themselves — they seek only to find the truth. America's juries truly represent democracy at work.

SHOULD JURORS DO HOMEWORK . . .

ACTIVITY 1B, Handout 2

One perspective:

Potential jurors should not be excluded from service on a particular case solely because they have heard about the case or otherwise have prior knowledge of it.

First, it is unrealistic to think that a completely impartial jury can ever be found. Everyone is influenced to some degree by prior knowledge or opinion. The important consideration is that jurors' minds not be made up before they enter the courtroom. The judge and the attorneys representing the parties already have a fair chance to eliminate those whose minds are made up, and that should be enough.

Second, jurors who have some knowledge of the dispute are in a better position to determine the truth and reach a just verdict. Jurors with basic information about the case will be able to eliminate time-consuming examination of minor details. This way, they will be free to focus on the differences between the parties and concentrate on applying the law to the facts.

Third, the U.S. Constitution guarantees freedom of speech and press, which means that citizens have a right to be informed. Access to the news media and discussions with other people will not necessarily make people less impartial. Some information may even make them better jurors. People who do not have prior knowledge or opinions of a case may not be sufficiently informed to make a sound decision. If informed citizens were kept off juries, it would hurt our system of justice as well as favor people who are not well-informed.

Fourth, if there has been extensive advance publicity, the judge, who has legal training and no interest in the case, can counteract any publicity which might influence potential jurors' decisions. By maintaining objectivity, the judge will set an example for the jury to follow. Jurors are questioned about their prior knowledge or possible bias during **voir dire**, and can be eliminated if they would not be fair to both sides. Jury instructions given by the judge and open jury deliberations also protect against bias. If there are people on the jury with a variety of opinions, the result will not be stacked in favor of one party.

. . . OR SHOULD THEY COME WITH A CLEAR MIND?

ACTIVITY 1B, Handout 3

Another perspective:

Potential jurors with prior knowledge or opinions about a particular case should be excluded from serving on a jury for that specific case.

First, the press frequently publicizes cases with great detail, well before the matter ever comes to trial. Not only are cases written about extensively, but pictures and even videotapes are shown to the public. People who are exposed to this publicity are generally influenced by it in one way or another. As a society, we cannot eliminate this publicity because of the value we place on the First Amendment freedoms of speech and press.

Second, the publicity in the press is often one-sided, inaccurate or incomplete. Rarely are both sides of a story told in sufficient detail. Videotapes are particularly harmful in this regard. For instance, a videotape of alleged police brutality may not show the circumstances of provocation or violence triggering police reaction. And the victim of the alleged misconduct may erroneously be considered an offender simply because an arrest has been made.

Third, this publicity is likely to unduly influence potential jurors and cause them to make up their minds before listening to the evidence. The claim that jurors can disregard their prior views about a case simply isn't realistic. The very nature of most biases or prejudices is that the bias is unknown to the person who holds it. Judges and lawyers recognize the harmful effect of publicity on the impartiality of jurors, and courts frequently impose gag orders on the parties to a case. This is because information, once in the hands of the public, is apt to be distorted.

Fourth, the ways that courts attempt to compensate against juror bias and pre-existing opinions may not be really effective. For instance, jurors who indicate that they have some information about a case may still serve on a jury if they say that the information will not influence them. There is no accurate way, however, to find out whether they have been influenced or not, even though jury instructions do tell jurors to disregard what they have heard. For justice to prevail, every effort must be made to ensure that bias and prejudice do not affect jury deliberations.

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27 Background for Teachers

30 Why Do We Need a Jury? *Activity 2A*

31 Trial by Jury Guarantees *Handout 1*

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OBJECTIVES

As a result of this lesson, students should be able to

○ Describe the U.S. Constitution's provisions on trial by jury and explain the principles they protect;

○ Discuss the difference between a criminal prosecution and a civil lawsuit;

○ Explain why fact questions are decided by juries as they are; and

○ Give several reasons why serving as a juror is an important civic duty.

BACKGROUND FOR TEACHERS

The extent to which trial by jury is utilized in both civil and criminal cases is unique to America. Other English-speaking countries have jury trials for criminal cases and some civil lawsuits. But the guarantee of jury trial in the U.S. extends to a broader range of cases than in any other nation.

The right to trial by jury was considered so fundamental in America that it was included in the U.S. Constitution. The Sixth Amendment gives the right to defendants being prosecuted for allegedly committing crimes. The Seventh Amendment preserves the right in civil cases where one person or corporation brings a lawsuit against another and asks the jury to determine whose rights should be enforced.

JURY TRIAL IN CRIMINAL CASES
United States Constitution, Amendment VI

> In all criminal prosecutions, the accused shall enjoy **the right to a speedy and public trial, by an impartial jury** of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Although the Sixth Amendment guarantees a defendant the right to a trial by jury in criminal cases, the defendant may opt to be tried before a judge only.

The impartiality requirement for jurors, covered in Lesson 1, has raised a number of questions that the courts have had to decide. For instance, questions have been raised about **jury selection (voir dire** — see Lesson 3). What are the criteria for acceptable jurors? What kinds of questions can be asked of potential jurors? For what reasons can people be excluded from a jury panel?

The Sixth Amendment further requires that the jury be selected in the state and area in which the crime was committed, but it is sometimes necessary to balance this requirement with the requirement of an impartial jury. What if the defendant believes that there has been so much publicity about the case that a local jury will have already made up its mind? In that case, the defendant may ask that the trial be moved to another location where the jury will have been less influenced by publicity. This is called a **change of venue**.

JURY TRIAL IN CIVIL CASES

United States Constitution, Amendment VII

> In Suits at common law, where the value in controversy shall exceed twenty dollars, **the right of trial by jury** shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Juries are also a vital aspect of civil trials. The Seventh Amendment preserves trial by jury in civil cases, and sets forth some basic premises to be followed. With some procedural variations, all states provide civil jury trials upon demand by either of the parties.

A defendant's right to trial by jury is absolute in criminal matters, but not in civil cases. Here, the U.S. Supreme Court has held that the right to jury trial in civil cases is "preserved" in federal courts only in the kinds of cases in which it was available in 1791. As a result, a jury does not decide cases in **equity**, in which the court is requested to enter a special order to force the opposing party to act in a certain way or to forbid some action. For example, the court may be asked to issue a restraining order against the sale of a property.

Finally, the Seventh Amendment commands respect for the decision a jury makes. This requirement encourages the parties to bring disputes to an end. Other courts cannot second-guess the jury's interpretation of the facts. A losing party cannot appeal a jury verdict because the jury's interpretation of events agreed with that of the other party. A jury verdict can be **reversed** only if there is a significant error of law, such as an improper jury instruction or misinterpretation of a statute, or a procedural error such as improper admission of evidence.

The role of the jury must be distinguished from that of the judge. Although historically the functions of the judge and jury were very similar, as our legal system has evolved, so have their roles. Today jurors determine **questions of fact**. They decide what really happened based solely upon the testimony and evidence presented in the courtroom. The judge, on the other hand, must analyze **questions of law**. This distinction arose because it was seen as an injustice for jurors to decide legal principles about which they had no formal training.

Trial by jury is regarded as a critical guarantee. It is also recognized as a fundamental aspect of being a U.S. citizen. Each of us has an interest in ensuring that our legal system promotes justice. To this end, the jury system gives the average citizen an opportunity to be part of what goes on in this country's courtrooms and to help administer justice.

This civic responsibility includes the individual duty to ensure that the process is free from deceit and discrimination in every aspect of the trial in which the jury is involved, from voir dire, to trial, to deliberation, to verdict, and, in some states, to sentencing. The system was developed to involve the public actively; complaints about the integrity of the courts reflect upon the public as well.

WHY DO WE NEED A JURY?

ACTIVITY 2A

MATERIALS
- ○ Text of the Sixth and Seventh Amendments *Handout 1*
- ○ Blackboard

Ask students to read the text of the Sixth and Seventh Amendments aloud. Ask them to pretend they have just met a visitor from another country who does not understand the American system of trial by jury. How would the students explain it? Why is trial by jury such a crucial guarantee of our legal system?

When describing the legal system, students should mention that the jury is separate from the judge. They should discuss the difference between the judge and the jury. How do their roles differ? Are they looking for the same thing? What benefits are derived when you have both a judge and a jury? Write the major points — value, importance, key players, key words or phrases — on the board for easy reference.

In discussing jury service as an important civic duty, students might cite the historical instances when juries protected individual rights from encroachment by government, such as the prosecution of William Penn. Students might also underscore the involvement of community representatives in making important decisions, the role of community service in helping to resolve disputes that cannot be settled without going through a trial, and the responsibility of citizens to actually govern, if only for a short time. Students may also consider that many judges look on the jury's fact-finding role as a valuable comparison with their own decision-making process.

TRIAL BY JURY GUARANTEES

ACTIVITY 2A, Handout 1

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

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OBJECTIVES

As a result of this lesson, students should be able to

- Describe the process of summoning and qualifying a jury pool *Activity 3A*;
- Define the purpose of voir dire *Activity 3B*;
- Formulate typical questions used in voir dire *Activity 3B*; and
- Discuss voir dire strategies *Activity 3B*.

BACKGROUND FOR TEACHERS

Potential jurors are selected from a **master list**, compiled by the state from voter registration lists, drivers' licenses and other sources. The ideal master list should include all persons in the community who are eligible for jury duty. In practice, however, some eligible persons, for instance those who do not vote or drive, are not on these lists. For a research project, have students find out how your community's master list is compiled. From the master list, communities often prepare a **qualified list** from questionnaires filled in by those on the master list. Potential jurors are **summoned** for jury duty.

A **jury summons** is a legal document requiring a person to report to the court at a particular time and place. It is an important document that requires careful reading and timely response.

Jurors serve for a specified time frame. In some places, prospective jurors report to the court for one or two weeks. From this group, known as the **jury pool**, some are selected to be interviewed for **jury panels**, from which jurors are selected to serve for a particular case. A person summoned must report each day for the specified period whether selected for a trial or not; a person selected may serve on several trials. If a trial continues beyond the specified period, jurors must serve until the trial ends.

The more modern trend is to require jurors to serve for "**one day or one trial**." This practice spreads jury service among more persons and lessens the time period for those who are selected to serve on juries.

Voir dire — the process of selecting the jury — is critical to the jury's impact on the case. Through voir dire each party has a chance to make sure the jurors will be fair. Potential jurors are usually questioned in the presence of the judge by attorneys representing each party. The purpose is to determine impartiality, bias or prejudice, and objectivity. In some jurisdictions the judge asks the questions.

Obviously, the parties each want a jury that will be most likely to decide in their favor. Each tries to identify those individuals who would be beneficial to the *other* party, then tries to remove as many of them as possible by the use of two types of **challenges**, also called **strikes**.

The first is a **challenge for cause**, made when there is a valid reason for not having someone serve on a particular jury. The person, for example, may know one of the parties, or may have some experience or belief that tends to favor one side, or may not have been truthful in answering a question. A person who lies can be charged with perjury, since voir dire hearings are official judicial proceedings which occur under oath.

The second is a **peremptory** challenge, used by an attorney to remove a potential juror without having to give a reason. Both sides are given a certain number of peremptory challenges. Both sides use their peremptory challenges to eliminate persons who may be detrimental to their own cases. The goal is to select a fairly neutral jury.

Although peremptory challenges give the attorneys great latitude, there are limitations on their use. For instance, some criminal defendants have alleged that prosecutors improperly used their peremptory challenges in a discriminatory manner to remove potential jurors based upon such personal characteristics as race, age, sex, or religion. Where relevant, personal characteristics may be a legitimate reason for a person's removal. For instance, a potential juror who believed for religious reasons that no one should ever take a dispute to court could be challenged for cause. But removal becomes discriminatory — and unconstitutional — when the characteristic that is the basis for removal is not relevant. The race and sex of potential jurors can never be relevant.

SUMMONING POTENTIAL JURORS

ACTIVITY 3A

MATERIALS

- ○ Jury summons
- ○ Information letter
- ○ Juror qualification questionnaire

Before class, modify the jury summons form to reflect the one used by your state or local court system, or obtain a copy of the form used by your local courts. Hand out the summons and information letter and read them aloud. Then have the students complete the questionnaire. Discuss all three documents carefully.

SUMMONS *Handout 1*

- ○ It is a court document.
- ○ It is an **order** to appear in court.
- ○ It provides the date and time to report (use your classroom and class period).
- ○ It specifies where to report (the school address can be used).
- ○ It specifies the length of service (one trial or the number of class periods).
- ○ It specifies the type of jury (in this case, a **petit jury**) for which the recipient is summoned.
- ○ It quotes a statute or ordinance, making clear that the legislature considers jury service a serious obligation.
- ○ It states that failure to comply may result in fine or imprisonment.
- ○ It bears the signatures of the Clerk of the Court and the Chief Judge.

INFORMATION LETTER *Handout 2*

○ It explains that the person summoned will serve either as a **petit juror** who will hear a case that has come to trial, or as a **grand juror** who is part of a fact-finding body that determines whether there is enough evidence to warrant charging a person with a serious crime. The **grand jury** performs its duty before a trial ever begins and before a **petit jury** is ever selected.

○ Jurors are not generally motivated to serve because of the compensation offered, but out of a sense of civic duty. In fact, juror compensation is usually modest. Jury duty can be portrayed as an honor and privilege, not a job.

Refer to the section of the information letter on "Jury Service — Democracy in Action," and emphasize the non-monetary benefits of jury service.

Your jurisdiction may provide potential jurors with an information booklet about jury duty, or play a videotape for jurors when they are first summoned. If so, you may be able to utilize these resources.

QUALIFICATION FORM *Handout 3*

○ Ask which qualifications relate to *fitness* to serve as a juror.

○ Ask which qualifications relate to whether or not the candidate has the *right* to serve.

○ Ask which qualifications relate to whether or not it is *reasonable* to ask the candidate to serve.

SUMMONS FOR JURY SERVICE *

ACTIVITY 3A, Handout 1

Office of the Clerk of the Court
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Name: ______________________________
Address: ______________________________
____

Subject: SUMMONS FOR JURY SERVICE

BY ORDER OF THE CHIEF JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, YOU ARE HEREBY SUMMONED TO SERVE AS A JUROR AS INDICATED BELOW. PLEASE COMPLETE THE ENCLOSED JUROR QUALIFICATION FORM AND RETURN IT WITHIN FIVE (5) DAYS. FAILURE TO APPEAR AS DIRECTED BY THIS SUMMONS MAY RESULT IN A FINE OF NOT MORE THAN THREE HUNDRED DOLLARS ($300) OR IMPRISONMENT FOR NOT MORE THAN SEVEN (7) DAYS OR BOTH. D.C. CODE §11-1907.

Date and Time to Report:

Type of Jury:

Where to Report:

Length of Service:

Signed,

____
Clerk of Court

____
Chief Judge

---

* Adapted from the summons for jury service used in the Superior Court of the District of Columbia.

LETTER TO PROSPECTIVE JURORS *

ACTIVITY 3A, Handout 2

Dear Citizen:

You have been randomly selected for jury service in the Superior Court of the District of Columbia. The law requires that you complete and return the enclosed juror qualification form in the next five (5) days. For general information regarding jury service, call 879-1604.

LENGTH OF SERVICE

Your service as a juror will be either as a petit juror or as a grand juror, as indicated on your summons. If you are selected to sit on a trial as a petit juror on the day you are summoned, you must be prepared to serve for the full length of the trial. Since most trials last for several days, you must set your schedule accordingly. If you are not selected for a trial on the day you are summoned, your service to the court will end unless extended by the Clerk of the Court. Grand jurors serve not more than 25 work days unless extended by the Chief Judge.

EXPENSE MONEY

Jurors who work in private industry and are not paid their normal salary while serving will receive the $30.00 fee that all jurors receive for their juror service. But full-time government employees (Federal, State, or local) and private sector employees who are paid their normal salary while on jury duty will not receive a fee but will receive the $2.00 that all jurors receive each day for transportation.

EXCUSALS/DEFERRALS

District of Columbia law does not allow you to be excused from jury service based on the type of job you hold. Your employer is required to give you time off from work to serve as a juror. If, however, there is a grave illness in your family or other serious problem which creates undue hardship or extreme inconvenience, making it impossible for you to comply with the terms of this summons on the date(s) specified, please notify the Jury Office immediately.

If you wish, you may receive one — but only one — deferral of your jury service. If you receive a deferral, you must provide the Jury Office with a mutually agreeable date on which you can serve. That date must be not later than 90 days after your original date. You must serve on the mutually agreed upon date. The deferred date must be one on which you will be available for several days in case you are selected for a trial. The request for a deferral can be accomplished by calling 879-4604 within five (5) days of your receipt of this summons. You will not receive another summons for the deferred date. You must bring this original summons when you report for jury duty.

JURY SERVICE — DEMOCRACY IN ACTION

Jury service is one of the highest duties of citizenship. It is also an interesting experience that will teach you more about your system of justice and how it works. While jury service may require you to adjust your normal schedule, we hope that any inconvenience will be minimal and that you will enjoy the opportunity to participate in this vital process of our democratic society.

Sincerely,

Clerk of the Court

• Adapted from the letter to prospective jurors used in the Superior Court of the District of Columbia.

JUROR QUALIFICATION FORM *

ACTIVITY 3A, Handout 3

Please read and print your answers to the questions below.

		Yes	No
1.	Are you a citizen of the United States?	___	___
2.	Are you now and for the last six months a resident of the District of Columbia?	___	___
3.	Are you 18 years of age or older?	___	___
4.	Can you speak and understand the English language?	___	___
5.	Do you have any physical or mental handicap that would not permit you to serve as a juror?	___	___
6.	Have you served as a grand or petit juror within the last two years?	___	___
7.	Do you have a pending felony or misdemeanor charge in any federal or state court?	___	___
8a.	Have you ever been convicted of a felony?	___	___
8b.	If the answer to 8a was yes, was it more than 10 years ago?	___	___

Juror's Name:______________________________

Juror's Address:______________________________

____

____

Age:__________ Sex: M_____ F_____

Employer:______________________________________

---

* Adapted from the juror qualification form used in the Superior Court of the District of Columbia.

HOW VOIR DIRE WORKS

ACTIVITY 3B

MATERIALS

- ○ Voir dire question list
- ○ Numbered index cards or labels
- ○ Elimination charts

In this voir dire selection in the classroom, the teacher might play the role of the judge, and two "attorneys" might be played by students selected before class. It might be even more effective to recruit two persons from outside class, such as actual attorneys or law students. Their legal training and experience are appealing to students and add authenticity to the process.

Local attorneys are often willing to help out. Sources for volunteers are your local bar association, a law-related education (LRE) program, nearby law schools, and state and local trial lawyer associations. (See Appendices A & B.) Before class, the attorneys should be given case materials for *Vickers v. Hearst* (see Lesson 4), as well as the voir dire questions in Handouts 2 and 3 for this activity. Attorneys or law students can use the questions for reference purposes but may add other questions if they think it appropriate.

Before class, prepare enough consecutively numbered labels or index cards for every person in your class and hand them out to students as they enter. These are their jury pool participant numbers and should be held by them or placed on their desks where the attorneys and judge can see them. When everyone is present, introduce the judge and thank the jury pool for attending. Then explain that the attorneys will be questioning them in order to select the jury panel for a particular case.

Ask the students to stand, raise their right hands, and take the prospective jurors' oath in Handout 1 for this activity. Alternatively, have a student call the local courthouse and ask a courtroom clerk for the wording of the oath for prospective jurors used in your jurisdiction. Remind the students that potential jurors are sworn to tell the truth and are subject to possible punishment for perjury if they don't, but that, for purposes of this activity, students may have to make up facts.

Next, introduce the attorneys for the plaintiff and the defense. Direct the attorneys to proceed with voir dire questioning. The plaintiff's attorney should go first, beginning with a short personal introduction. The attorney will ask a general question and instruct the pool that any person whose answer is "yes" should either stand or raise a hand. Then, identified by their juror numbers, these students will be called on to explain their responses. After each answer, the defense attorney should ask the same person follow-up questions. Remember, the whole idea behind voir dire is to find out which persons would be beneficial or harmful to the attorney's client. Questions should be asked with this purpose in mind. Continue this process for the plaintiff's side, then allow the defense attorney to take the lead in asking questions, with plaintiff's counsel asking follow-up questions.

Ideally, the process should continue until a jury of 12 is selected, but it can be shortened to meet your time constraints. Each attorney should be allowed a set number of peremptory strikes — perhaps three to five. Their strikes should be noted on a voir dire elimination sheet (Handout 4). A sample completed elimination sheet (Handout 5) is provided so that students can see the kind of notes the attorneys make about juror strikes.

Once the questioning is completed, have the attorneys read their list of removed jurors aloud, explaining what type of challenge was used, and giving the reason for each challenge for cause.

Once the jury has been selected, discuss the process with your students — as students now, not as jurors. First ask them if they were able to determine what the case was about from the questions being asked. How did they know that? What were the clues? You can explain the facts of the case further, elaborating on why specific questions were asked and tying these questions to key facts in the case.

Then, ask why certain questions were asked, what responses the attorneys were looking for, what strategies each attorney used and why, and whether the students think this is a fair way to select a jury.

OATH FOR PROSPECTIVE JURORS *

ACTIVITY 3B , Handout 1

The court clerk asks citizens who have been summoned to raise their right hands. The clerk then reads the following:

> **Do you, and each of you, solemnly swear or affirm that, as much as possible in this classroom voir dire, you will truthfully answer all questions asked of you by the Court and counsel relating to your being competent to try the issues in this case?**

All prospective jurors should then answer, "Yes."

Prospective jurors should then be invited to be seated.

---

* Adapted from the oath for prospective jurors used in the Superior Court of the District of Columbia.

VOIR DIRE QUESTIONS FOR PLAINTIFF'S ATTORNEY

ACTIVITY 3B, Handout 2

DIRECTIONS TO THE TEACHER

These questions are to be used by the attorney to single out potential jurors who will be unfavorable to the plaintiff's side. The system is a process of elimination, and the questions should be used in conjunction with the elimination sheets. The voir dire selection should be conducted in a formal atmosphere. Remember to administer an oath to the potential jurors, reaffirming the importance of the truthfulness of their answers.

DIRECTIONS TO THE QUESTIONING ATTORNEY

Introduce yourself and begin asking the questions listed below. For each question, mark any affirmative answers on the elimination sheet (Handout 4) next to the prospective juror's number, and follow up on affirmative answers as appropriate. If it is clear that a person's answers indicate prejudice, note that juror on the elimination sheet as being removed for cause. Note the specific cause or related voir dire question number for explanation purposes later. You are allowed 3-5 peremptory strikes, depending upon the size of the class. This number should be mutually determined before class with the other counsel and the teacher. All other removals must be made for cause. Remember that **peremptory strikes** are limited, but can be made for any reason, so long as their use would not violate the U.S. Constitution. For instance, strikes made because of a dislike for members of a certain ethnic or religious group are not allowed. **Removals for cause** must be based on a valid reason for not having the prospective juror serve on the jury. It might be clear, for instance, that the juror favors one side or another. Each time there is an affirmative answer to a question, the opposing counsel should be given a chance to ask questions regarding that answer as well. If time permits, the process should continue until a jury of 12 is selected.

1. Does anyone here know me or the law firm I work for?

2. Does anyone here know any of the following people: Terry Vickers, Sandy Hearst, Dana Ivy, Lee Porter? (If yes, follow up for specifics — these people should probably be eliminated for cause.)

VOIR DIRE QUESTIONS FOR PLAINTIFF'S ATTORNEY

3. Have you, any member of your family, or a close friend ever filed any lawsuits or injury claims? Was there litigation? What kind? Was it resolved to your satisfaction?

4. Do any of you feel that a person should not sue for injuries?

5. Would any of you feel uncomfortable awarding substantial damages?

6. Have you, members of your family, or close friends had legal training or experience, or worked for any lawyer?

7. Have you, members of your family, or close friends worked in or owned a bar or other establishment where alcoholic beverages are sold?

8. Do you know about the law that holds people who sell or serve alcoholic beverages responsible for the actions of those who consume them? How do you feel about that law?

9. Have you, members of your family, or close friends had any medical training or worked for a doctor or a medical facility?

10. This case may take five days to try. Do any of you have a problem serving on this important and serious case for this period of time?

11. Have any of you ever served as jurors in a personal injury/automobile accident case? How do you feel about that experience?

12. Do you know of any reason at all why you would not, based upon the evidence presented and instructions of the court, be able to render a fair decision without sympathy, passion or prejudice for or against any party?

VOIR DIRE QUESTIONS FOR DEFENDANT'S ATTORNEY

ACTIVITY 3B, Handout 3

DIRECTIONS TO THE TEACHER

These questions are to be used by the attorney to single out potential jurors who will be unfavorable to the defendant's side. The system is a process of elimination, and the questions should be used in conjunction with the elimination sheets. The voir dire selection should be conducted in a formal atmosphere. Remember to administer an oath to the potential jurors, reaffirming the importance of the truthfulness of their answers.

DIRECTIONS TO THE QUESTIONING ATTORNEY

Introduce yourself and begin asking the questions listed below. For each question, mark any affirmative answers on the elimination sheet (Handout 4) next to the prospective juror's number, and follow up on affirmative answers as appropriate. If it is clear that a person's answers indicate prejudice, note that juror on the elimination sheet as being removed for cause. Note the specific cause or related voir dire question number for explanation purposes later. You are allowed 3-5 peremptory strikes, depending upon the size of the class. This number should be mutually determined before class with the other counsel and the teacher. All other removals must be made for cause. Remember that **peremptory strikes** are limited, but can be made for any reason, so long as their use would not violate the U.S. Constitution. For instance, strikes made because of a dislike for members of a certain ethnic or religious group are not allowed. **Removals for cause** must be based on a valid reason for not having the prospective juror serve on the jury. It might be clear, for instance, that the juror favors one side or another. Each time there is an affirmative answer to a question, the opposing counsel should be given a chance to ask questions regarding that answer as well. If time permits, the process should continue until a jury of 12 is selected.

1. Does anyone here know me or the law firm I work for?

2. Does anyone here have any strong beliefs about alcohol that would make it uncomfortable for you to hear a case about alcohol?

VOIR DIRE QUESTIONS FOR DEFENDANT'S ATTORNEY

3. Does anyone here feel that the consumption of alcohol is not a voluntary act?

4. Does anyone here feel that when a person begins to drink, that person is not responsible for subsequent actions?

5. Does anyone here feel that just because a person takes a drink and then drives and is in an accident, that the drinking must have caused that accident?

6. Has anyone here ever been a member or supporter of any group that seeks to prohibit the sale or use of alcoholic beverages?

7. Has anyone here hosted any functions where alcoholic beverages were served?

8. Does anyone here feel that simply because a person sues in court, that person deserves compensation?

9. Does anyone here disagree with the rule that requires plaintiffs to prove their case by showing that the evidence favors them more than the defendants?

10. If the plaintiff fails to prove the case according to the court's instructions, are you willing to award nothing, even though there may be serious injuries?

11. Do you believe that feelings of sympathy would prevent you from doing your duty as a juror, or prevent you from being loyal and faithful to your oath and returning a just verdict based solely upon the evidence?

12. If the court instructs you that the plaintiff has the burden of proving the case by a preponderance (the greater part) of the evidence, and if at the close of the case the evidence is equal on both sides, would any of you nevertheless vote for the plaintiff for sympathetic reasons?

VOIR DIRE ELIMINATION SHEET

ACTIVITY 3B, Handout 4

DIRECTIONS

Use the numbers below to mark eliminated jurors. Circle selected jurors for easy reference.

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50

Juror No. Removed (P - peremptory, C - cause) Note responses and/or cause for removal.

____ ____
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VOIR DIRE ELIMINATION SHEET

Juror No.	Removed (P - peremptory, C - cause) Note responses and/or cause for removal.

SAMPLE COMPLETED VOIR DIRE ELIMINATION SHEET

ACTIVITY 3B, Handout 5

DIRECTIONS

Use the numbers below to mark eliminated jurors. Circle selected jurors for easy reference.

1	2	③	~~4~~	⑤	6	~~7~~	8	⑨	10
11	⑫	13	14	~~15~~	16	17	18	19	20
21	~~22~~	㉓	24	~~25~~	26	~~27~~	28	㉙	30
㉛	32	~~33~~	~~34~~	35	36	㊲	㊳	39	㊵
41	㊷	43	44	45	46	47	㊽	49	50

Juror No.	Removed (P - peremptory, C - cause) Note responses and/or cause for removal.
4	C - Knows client's spouse
7	P - Said yes to defendant's question 3
15	C - Worked as a bartender during college — question 7
22	C- Defendant's question 6 — voted to make whole city dry last year
25	P - Seems too moralistic for this case
27	P - Going to law school at night — question 6
33	P - Looks too opinionated
34	P - Says a close friend has a drinking problem

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TRIAL: THE PARTIES HAVE THEIR SAY

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OBJECTIVES

As a result of this lesson, students should be able to

○ Distinguish between questions of law and questions of fact, and compare the roles of the judge and the jury regarding questions of law and fact *Activity 4A*;

○ Describe opening statement, direct examination, cross examination, and closing argument *Activity 4B*;

○ Explain the function of jury instructions *Activity 4B*;

○ Explain rules of evidence, objections to evidence, and what it means when the judge rules that an objection is "sustained" or "overruled" *Activity 4B*;

○ Explain burden of proof "by a preponderance of the evidence" and "beyond a reasonable doubt," and state which of these two standards of proof will apply to the case being discussed *Activity 4C*; and

○ Using the mock trial as an example, analyze how the rules of evidence are applied to the different steps of the trial, showing how the rules contribute to achieving a fair trial and a just result *Activity 4D*.

BACKGROUND FOR TEACHERS

The information provided below prepares students to conduct the mock trial of *Vickers v. Hearst.* This exercise provides an innovative, educational look at the principal elements of a civil trial. Case materials are provided in Handouts 1 and 2, Activity 4D.

QUESTIONS OF FACT *v.* QUESTIONS OF LAW

The role of the judge is to determine the law that applies to a particular case. For example, "defamation," or harm to a person's reputation, occurs "when a person makes a false statement that is communicated to a third party, causing harm to the plaintiff." The judge, in the **jury instructions**, would state the law and define the aspects of it that pertain to the case at hand. The judge might note that the defamatory communication must be made to someone other than the plaintiff. The judge might explain that the harm consists not of offending the plaintiff but of hurting the plaintiff's reputation in the eyes of the other person. The judge would also instruct the jury that truth is a defense to defamation. The statement must be false. A true statement, even if harmful, is not defamatory.

The role of the jury is to determine the facts in dispute and apply them to the law. Suppose a garage owner sues Justin Smith for defamation after Justin brings a car to the garage and tells the owner, "Your mechanics ruined my motor," in front of other customers. During the trial, the garage owner brings in facts to refute the motorist's story, and the defendant insists that the motor is ruined. In order for the garage owner to win, the jury must find that the statement was made, that it was false, that persons other than the garage owner heard it, and that as a result the garage owner's reputation suffered a loss.

STEPS OF A JURY TRIAL

The steps of a jury trial are described in Handout 1, Activity 4B. Note that the opening statements and closing arguments are not evidence.

They are the attorneys' presentations of evidence that they want the jury to consider from the witnesses, documents and other exhibits brought out during direct and cross examinations.

RULES OF EVIDENCE

Basic rules of evidence are described in Handout 1, Activity 4C.

There are two purposes for rules of evidence: to make it possible to ascertain the truth; and to ensure that the trial is conducted fairly and economically. Rule 102 of the Federal Rules of Evidence, used in the federal district courts, states that, "These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." Of course, people differ in their opinions as to how truth should be measured or judged, and what are fair and economical proceedings.

Truthfulness of documents and testimony is a matter primarily of accuracy, credibility and completeness. What characteristics make a witness more believable or less? How accurate is a document, and what does it prove? Written rules of evidence codify some generally accurate indicators of truthfulness. For example, a witness's in-person testimony gives the judge or jury the chance to assess the demeanor of the witness. Out-of-court statements, even if written and sworn to in detail, may be less trustworthy. And the judge or jury is interested in what the witness has to say based on personal experience, not on rumors the witness has heard from someone else or from suggestions the witness picks up in court. Therefore, leading questions on direct examination, hearsay, secondhand information, and opinions from those who are not experts are generally banned as untrustworthy.

Concepts of fairness and economy are important because they help keep the truth in perspective. These concepts include such characteristics as relevance and prejudice. For example, it may be that a defendant's relative is under indictment for working for "the mob," but unless that fact is shown to be related to or important to the case, it should be excluded from evidence as irrelevant. Similarly, a plaintiff may be divorced and may have lost custody of children because of abuse. But such a fact, even if somewhat relevant to the issues in a case, might be excluded at trial so that it will not create unfair prejudice.

BURDEN OF PROOF

In general, the party bringing the claim, or charging someone with a crime, has the **burden of proof** — the obligation of proving the facts on which the lawsuit or criminal prosecution is based.

In a civil case, the burden of proof is usually the **preponderance of the evidence**. Preponderance means the greater part, or at least slightly more than half. In other words, in order to find for the plaintiff, the jury must believe that the facts are more in favor of the plaintiff than the defendant. If the jury cannot decide whom the facts favor (i.e., the facts favor each side equally), or if the jury finds the facts favorable to the defendant, the defendant wins.

In a criminal case, the prosecution must prove its case **beyond a reasonable doubt**. This does not mean that the jury must be 100 percent certain that the defendant is guilty but that any doubts that jurors have about guilt must be unreasonable. For teaching purposes, an unreasonable doubt may be defined as a doubt for which you can't give any reason.

QUESTIONS OF FACT *v.* QUESTIONS OF LAW

ACTIVITY 4A

MATERIALS

- ○ Nerf basketball hoop or some improvisation of a basketball hoop
- ○ Nerf ball or other soft ball that will do no harm

[This exercise is more fun if acted out by students. If that is not possible, it can be effectively described by the teacher.]

Your students probably already know the difference between **questions of law** and **questions of fact**, even if they are not aware of the exact legal terms. This activity will bring the difference home to them.

Have three students stand up for a basketball game. Two are players and one is the referee. You are the play-by-play announcer. Instruct the students to play in accordance with your play-by-play calls. The names of the teams and players are adaptable. Your script is as follows:

> "It's the National Basketball Association (NBA) Championship game seven between the Lakers and the Bulls. The Bulls are losing by two points with five seconds left in the game. The Bulls' Michael Jordan drives down the court, stops and shoots just as the buzzer sounds. The ball rolls around the rim of the basket, then falls out. At the same time, the referee blows the whistle, calling a personal foul on the Lakers' James Worthy."

Under the rules of the game, Michael now has the chance to take two shots. Each shot is worth one point. He misses the first but makes the second. The Lakers begin celebrating, believing that the game is over and that they have won by one point. Suddenly, the referee blows the whistle again and allows Michael to take two more shots. He makes both, and the

Bulls win by one point. The Bulls start celebrating. The Lakers are stunned.

The next day the Lakers' attorneys sit down to formulate a complaint to file with the NBA Commissioner, asking the Commissioner to review the referee's decisions. Tell the students that they are now the legal committee representing the Lakers, assigned to draft the complaint. Under your direction, the discussion should extract answers to the following questions:

1. **Whose acts are in question?** The complaint is about the referee's rulings.
2. **What calls did the referee make?** The referee ruled on the initial foul and on the extra free throws.
3. **Which call can be appealed to the Commissioner, and which cannot?** The extra free throws can be appealed. The foul cannot.
4. **Why?** The foul call was a ruling based upon what the referee saw happening on the court at that time. The referee answered a **question of fact** — was a foul committed or not? — and the answer is not appealable. Note the Seventh Amendment from Lesson 2, which states that a jury's determination of fact cannot be re-examined by an appeals court.

   On the other hand, the call allowing the extra free throws obviously was an interpretation of the rules — the "laws" of the game — which are clearly set out before the game. The rules of basketball are like the law in court, so the referee was answering a **question of law**. The referee does not have the authority to change the rules. Thus, there *can* be an investigation by the Commissioner as to whether a rule was misapplied in this case. We have an **appealable issue**.

Discuss the similarities between fact/rule questions in the basketball game and fact/law questions in court. Note that there is no way to have an instant replay of the facts in dispute at trial.

Distribute Handout 1, Activity 4A. Discuss whether law or fact questions are involved. Handout 2 provides an answer key.

QUESTION OF LAW OR QUESTION OF FACT? YOU TRY IT!

ACTIVITY 4A, Handout 1

Read each of the following statements and indicate whether each involves a question of fact or a question of law.

____ 1. John took a shirt from Macy's without paying for it.

____ 2. Tom signed his brother's name to a check so he could cash it and buy a stereo without his brother's knowledge.

____ 3. The minimum driving age in this state is 16.

____ 4. A person who buys property known to be stolen is guilty of the crime of receiving stolen property.

____ 5. Mike threatened to harm Sue if she didn't deliver $10,000 to him.

____ 6. It is illegal for the Union Carbon chemical plant to emit more than an average of .005 parts per billion sulphur dioxide into the atmosphere per day.

____ 7. National Motor Co. cannot exclude all express warranties on a car it manufactures.

____ 8. Acme Pharmaceutical Co. sold aspirin without legally required child-resistant caps.

____ 9. Ace Brokerage Co. can charge a brokerage fee of no more than $100.00 to customers purchasing securities.

____ 10. Dan owned stock in the amount of $10,000 before marrying Linda.

____ 11. The government cannot take possession of and condemn Mary's house to construct a new highway without compensating her for its fair market value.

____ 12. Larry was driving 50 mph in a 30 mph speed zone when he crashed into a tree and damaged his car.

ANSWER KEY

ACTIVITY 4A, Handout 2

1. *Fact* — John's actions, taking a shirt without paying, are at issue. The related law is shoplifting.

2. *Fact* — Tom's actions, signing his brother's name to a check without his knowledge, are at issue. The related law is forgery.

3. *Law* — This state's law on driving, not anyone's actions while driving, is in question.

4. *Law* — The statement involves a general rule. It is illegal to buy property known to be stolen.

5. *Fact* — The issue is what Mike did (trying to extort money), not what happens *if* he did it.

6. *Law* — Just as in number 4, the judge cites the law on the legal daily chemical emissions level for a chemical plant and then applies it to Union Carbon.

7. *Law* — The law forbidding exclusion of express warranties by car manufacturers is applied to National.

8. *Fact* — The issue is what Acme did. It sold aspirin without child-resistant caps.

9. *Law* — The law limiting brokerage fees for securities purchases is applied to Ace.

10. *Fact* — The issue is how much stock Dan owned before marrying Linda.

11. *Law* — The issue is *what* the government can and cannot do, not whether the government did it or not.

12. *Fact* — Larry's actions, driving too fast and crashing into a tree, are at issue.

ACTIVITY 4B

Have students read "Action in the Court," Handout 1. Review key terms and concepts, eliciting illustrations from students.

Obtain a videotape of a courtroom scene from a television show or a movie. An outstanding example is the film *Gideon's Trumpet*, which shows two separate courtroom trials of the defendant, Clarence Earl Gideon — the first without an attorney and the second with an attorney. Have the students identify the steps in the trial in the videotape. Have the students describe the components of each step and analyze the function of each step in terms of the purpose of the trial.

This activity may also be carried out by conducting a mock trial of *Vickers v. Hearst* (see Handouts 1 and 2, Activity 4D).

ACTION IN THE COURT *

ACTIVITY 4B, Handout 1

The following summarizes the steps in both civil and criminal trials:

1. **Opening Statement by Plaintiff or Prosecutor** — Plaintiff's attorney in civil cases, or prosecutor in criminal cases, describes the evidence to be presented as proof of the **allegations** — unproven statements — in the **complaint** or **indictment**. This often involves a summary or chronological overview of the important facts and a brief statement of what witnesses or documents will show to prove or disprove disputed facts.
2. **Opening Statement by Defense** — Defendant's attorney similarly explains evidence to be presented to deny the allegations made by the plaintiff or prosecutor.
3. **Direct Examination by Plaintiff or Prosecutor** — Each witness for the plaintiff or prosecution is questioned. Other evidence, such as documents or physical evidence supporting the plaintiff or prosecution, is presented. Skilled attorneys let the witness be the focus of attention while they remain in the background.
4. **Cross-Examination by Defense** — The defense has the opportunity to question each plaintiff or prosecution witness. Because cross-examination is an attempt to break down the story or to discredit the witness in the eyes of the jury, its results can be quite dramatic.
5. **Motions** — If the prosecution's or plaintiff's basic case has not been established from the evidence introduced, the judge can end the case by granting the defendant's motion to dismiss in civil cases or by entering a directed verdict of acquittal in criminal cases.
6. **Direct Examination by Defense** — Each defense witness is questioned by lawyers for the defense, similar to number 3 above.
7. **Cross-Examination by Plaintiff** — Each defense witness is cross-examined by the plaintiff's attorney or prosecutor, similar to number 4 above.

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8. **Jury Instructions (Jury Trials Only)** — The judge explains rules of law to consider in weighing the evidence. The prosecution, or the plaintiff in a civil case, must meet the burden of proof in order to prevail. In a criminal case this burden is very high. The prosecution must set out such a convincing case against the defendant that the jurors believe *beyond a reasonable doubt* that the defendant is guilty. In a civil case, the plaintiff must prove the case by a *preponderance*, or greater part, of the evidence. In some courts all or part of the jury instructions are given before the closing statements of the lawyers, so that the jury will know the law that must be applied to the facts and arguments made by counsel. In other courts the instructions are given directly before jury deliberations begin.

9. **Closing Statement by Plaintiff** — Prosecutor or plaintiff's attorney reviews all the evidence presented, notes uncontradicted facts, states how the evidence has satisfied the elements of the charge, and asks for a finding of guilty in criminal cases or a verdict for the plaintiff in civil cases.

10. **Closing Statement by Defense** — Same as closing statement by prosecution or plaintiff. The defense asks for a finding of not guilty in criminal cases or a verdict for the defendant in civil cases.

11. **Rebuttal Argument** — Prosecutor or plaintiff can usually reserve part of the time allowed for the closing statement to make additional remarks to counteract the closing statement of the defense.

12. **Verdict** — In most states, the jury's decision must be unanimous in criminal cases, although the U.S. Supreme Court permits 9-3 verdicts in some cases in which the death penalty cannot be given. Not all states require unanimous verdicts in cases involving **misdemeanors**, actions punishable by less than one year in prison. At least 75 percent of the jurors are usually expected to agree in civil cases.

    Understanding that a unanimous decision is often required of the jury will help students understand why jury deliberations are sometimes lengthy. If the jury is required to reach a unanimous decision but cannot do so, it is said to be a **hung jury**, and the case may be tried again.

ACTIVITY 4C

Have students read "Rules of Evidence," Handout 1. Review the key terms and concepts, generating illustrations from students as in Activity 4B.

Using the same videotape as in Activity 4B, or another videotape of a courtroom scene, have students identify issues of evidence presented by the videotape. Using stop action, students should discuss whether objections should be made if the rules of evidence are being violated and, if made, whether they should be **sustained** or **overruled**. Students should then analyze the rules of evidence as applied to the trial to determine how and to what degree the interests of justice were served by the rules.

Finally, describe to the students the concept of "burden of proof" set out in the "Background for Teachers" section. Ask the students which standard applies to the trial being discussed. (The answer depends on whether the case is criminal or civil.) Ask students to evaluate whether the prosecution or, in a civil case, the plaintiff has met the burden of proof.

RULES OF EVIDENCE FOR MOCK TRIAL *

ACTIVITY 4C, Handout 1

In American courtrooms, elaborate rules regulate the admission of evidence. These rules are designed to ensure that the truth is found and that both parties receive a fair hearing. Accordingly, the rules allow evidence for which the witness has firsthand knowledge and exclude evidence which is irrelevant, untrustworthy, or unfairly prejudicial. The following rules reflect the basic principles of evidence:

1. **Form of Questions** — A leading question is one that suggests an answer. Leading questions are not permitted during direct examination because the person asking the question is not permitted to suggest the answer to it. Direct questions are generally phrased to evoke the story or facts in the witness's own words on the basis of actual experience or observations. Example of a direct question: Mr. Bryant, can you please tell us what happened to you on the night of July 23rd? Example of a leading question: Mr. Bryant, isn't it true that you were drinking on the night of July 23rd?

2. **Firsthand Knowledge** — Witnesses generally must have directly seen, heard or experienced whatever it is they are testifying about.

3. **Witness Opinions** — As a general rule, witnesses may not give their opinions. They should confine their testimony to telling the facts — what they did, saw, heard, smelled, etc. However, witnesses who have special knowledge or experience may be qualified as "expert witnesses." Expert witnesses are allowed to express opinions about their areas of expertise.

4. **Hearsay** — Hearsay is an out-of-court statement offered to prove the truth of what is asserted in the statement. For example, suppose a witness says, "I heard that Darryl Bryant has a criminal record." This is hearsay if offered to prove that Darryl Bryant has a criminal record. Such statements as, "I was told. . . ," "I heard. . . ," or "I was informed. . ." are typical examples of hearsay statements. As a general rule, hearsay is not permitted as evidence in a trial. However, there are many exceptions and hearsay is sometimes permitted in an actual trial when it is shown to be reliable. For instance, a "dying decla-

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ration," made by a person who believed death was near, is considered to be more reliable than ordinary hearsay and may be admitted as evidence.

5. **Relevance** — Only relevant testimony and evidence may be presented. Irrelevant evidence is that which has nothing to do with the issues in the case. For example, to ask witnesses to an alleged crime if they have read any good books lately would, in most cases, disclose facts worthless for a jury or judge to consider.

6. **Introduction of Physical Evidence** — Any physical evidence, such as documents or photographs that either side wishes to have considered by the judge or jury may be introduced by

   - asking the judge to have the item *marked for identification* (for example, "Your Honor, I ask that this letter be marked for identification as 'Defendant's Exhibit A'");
   - *showing the item* to opposing counsel, who may object;
   - asking the witness on the stand to *identify the item* and relate it to the issues at trial (for example, "Mr. Kay, I show you what has been marked 'Defendant's Exhibit A.' Could you please tell us what it is?"); and
   - *offering the item* into evidence (for example, "Your Honor, I offer this letter for admission into evidence").

7. **Impeachment** — If testimony contradicts facts stated in previous testimony or statements, a lawyer can **impeach** the witness by comparing the present and prior statements and pointing out the contradictions. The attorney does not prove that one statement is closer to the truth than the other, but rather that the witness has told two different stories and should not be believed. Thus, impeachment calls into question the truthfulness of the witness. An attorney on cross-examination can also impeach a witness by pointing out bias. For example, when cross-examining a defense witness who in direct testimony has contradicted the plaintiff's story, the plaintiff's attorney asks, "Isn't it true that you have been angry with the plaintiff and that the two of you haven't spoken for 10 years?"

CONDUCTING A MOCK TRIAL *

ACTIVITY 4D

A mock trial is a simulation or enactment of a judicial proceeding. A mock trial may be based on historical events, cases of contemporary interest, school situations, or hypothetical fact patterns. It can be either formal or informal, depending upon the objectives and nature of the class.

Materials for a mock trial of the case of *Vickers v. Hearst* are provided in this activity. Handouts 1 and 2 provide the fact pattern, witness statements, applicable statute, and a trial exhibit. That case was also used in the voir dire activity in Lesson 3. As noted in "About This Manual," classroom-tested materials for a number of abbreviated mock trials are also available.

PURPOSE

Mock trials are designed to provide students with knowledge of the judicial system, legal process and courtroom procedure; develop student questioning, critical thinking and oral advocacy skills; demonstrate the roles of the various participants in the legal system; and introduce the class to people trained in the law.

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PROCEDURE FOR PREPARING A MOCK TRIAL

1. **Determine Objectives.** Consider the following:

   ○ Subject matter. Handouts 1 and 2 for this activity may be used to conduct a mock trial of *Vickers v. Hearst.* However, you may also choose to re-create an historical trial, such as the trial of John Peter Zenger (see Lesson 4 Bibliography), or a practical trial, such as a small claims court hearing.

   ○ Aptitude of students. This can dictate whether a trial without rules of evidence or with a few simplified rules is more desirable.

   ○ Complexity of material. You may want to hold an impromptu hearing involving a simple law and two opposing witnesses with simple fact statements. More complicated cases can involve multiple legal issues, statutes, hypothetical case interpretation, several witnesses on each side, documents, exhibits, and lengthy witness statements.

2. **Distribute Mock Trial Materials.** All students should read the law and any facts that have been agreed to by the parties in advance of the trial. For instance, in *Vickers v. Hearst,* Hearst does not dispute the amount of Vickers's medical bills but denies any responsibility to pay them. Whether the students read the entire set of materials including facts of the case, witness statements and other materials depends on your objectives.

3. **Select Students for Various Roles in the Mock Trial.** Depending on the type of trial, students may be attorneys, witnesses, jurors, bailiff, court reporter, and court observers. It is often helpful to invite a resource person, such as a law student, an attorney, or an actual judge to advise on legal questions. Assignments may be postponed until students have had the opportunity to practice various roles.

4. **Prepare Participants for Trial.** To expedite preparation for the actual enactment and to involve the maximum number of students, it is useful to divide the class into training groups.

- Instruct the entire class in such basic skills as opening statements, direct examination, cross examination, and closing statements. The teacher may model these techniques (a guest lawyer or law student is useful here) and elicit examples from the students based on their assignments. Students then put these skills into practice as they develop their roles for the trial in teams.
- Divide participants (attorneys, witnesses) into a *plaintiff's team* (a prosecution team in a criminal trial) and a *defense team*. Each team must prepare its side of the case. Within the teams, further divide the participants into *task groups*. Each group can be assigned to prepare one of the tasks in the trial. For example, a civil trial with two witnesses on each side would involve the following tasks:

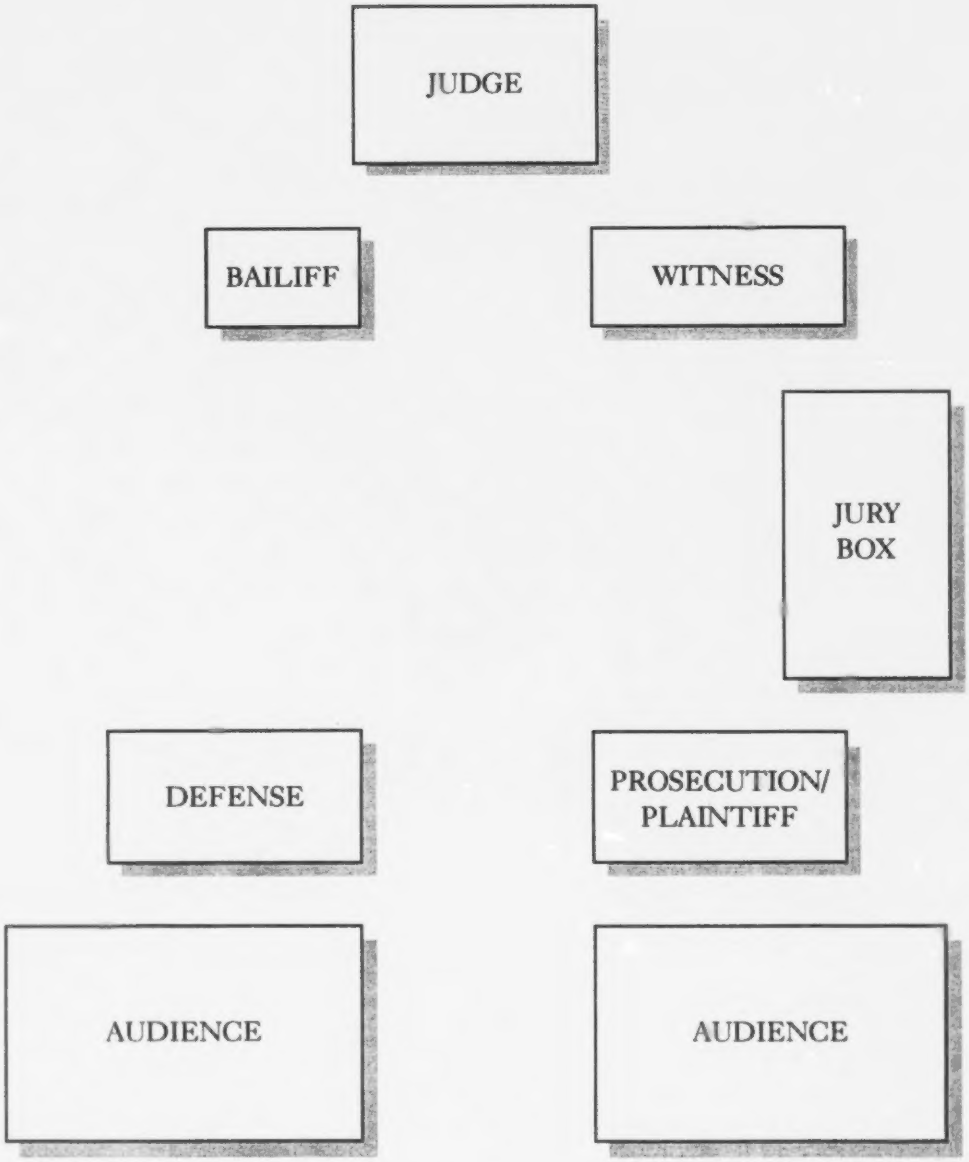
Plaintiff's Team	Defense Team
Opening statement	Opening statement
Direct examination of plaintiff's witness #1	Cross-examination of plaintiff's witness #1
Direct examination of plaintiff's witness #2	Cross-examination of plaintiff's witness #2
Cross-examination of defense witness #1	Direct examination of defense witness #1
Cross-examination of defense witness #2	Direct examination of defense witness #2
Closing statement	Closing statement

- While trial participants are preparing, students assigned to the jury may use the time to discuss the role of the jury, jury selection procedures in the local community, and the historical development of the jury system.

5. **Set Up the Classroom.** It is important for students to be familiar with the physical setting of the courtroom. The diagram on page 72 depicts the layout of a typical courtroom.

Then . . .

1. **Participants Take Their Places**: Participants include the judge, the attorneys, the witnesses, the jury, the bailiff, and courtroom observers.
2. **Bailiff Calls the Case**: "All rise. The Court of ________ is now in session, the Honorable Judge ________ presiding."
3. **Trial Proceeds**: Follow the steps outlined in "Action in the Court" (Handout 1, Activity 4B) and "Rules of Evidence" (Handout 1, Activity 4C).
4. **Jurors Deliberate and Decide**: In making a decision, the jury considers the evidence presented and decides which witnesses were most credible. (See Lesson 5.)


JUDGE
BAILIFF
WITNESS
JURY BOX
DEFENSE
PROSECUTION/ PLAINTIFF
AUDIENCE
AUDIENCE

VICKERS v. HEARST

ACTIVITY 4D, Handout 1

FACTS

Early on the morning of December 17, a two-car automobile accident occurred at the intersection of Justice and Eagle Streets, N.E., in Anytown. Terry Vickers, the driver of a 1989 Toyota coupe, was taken to the Northeast Regional Medical Center and hospitalized for treatment of a broken leg, bruised ribs and lacerations to the upper torso, neck and face. The other car, a 1987 Chevrolet sedan, was driven by Dana U. Ivy. Ivy was not injured.

Before the accident, Ivy had attended a holiday party hosted by Sandy Hearst for Hearst's friends and members of a social club to which Hearst belongs. The party was held in the party room of Hearst's apartment complex, two miles from the scene of the accident. Ivy pleaded guilty to running a stop sign.

Vickers filed suit against both Ivy, the driver, and Hearst, the social host. Anytown has a statute, the Safe Highways Act, that specifically makes a social host who serves alcohol to any obviously intoxicated person liable to anyone injured by that person. In this suit, Vickers alleged that Hearst negligently served alcohol to Dana Ivy in violation of Anytown's statute, and that Vickers's injuries in the automobile accident resulted from Hearst's negligence as well as Ivy's. Vickers has demanded $100,000 in settlement from Hearst for medical bills, loss of wages, and pain and suffering.

Before the trial, Vickers settled out of court with Ivy for the cost of car repairs. At trial, Hearst does not contest the amount of Vickers's medical bills and lost wages, but denies liability for serving alcoholic beverages to Ivy.

WITNESSES

For the plaintiff:	*For the defendant:*
1. Terry Vickers, plaintiff	1. Sandy Hearst, defendant
2. Lee Porter, guest at the party	2. Dana U. Ivy, driver

ISSUES

This case concerns an interesting aspect of **negligence** law: **third party liability**. The statute on which this mock trial is based, Anytown's Safe Highways Act, is representative of statutes passed in 35 states that establish a special category of negligence for those who serve alcoholic beverages. The elements of this type of negligence are outlined in the statute. The plaintiff should use the facts of the case to try to establish liability under the statute. The defendant should aim to disprove these elements of negligence.

The issue of third party liability is timely in many states and can provoke lively discussion on relevant public policy issues following the mock trial.

STATUTORY LAW

Anytown Safe Highways Act

An Act to Establish Third Person Liability of Persons Negligently Serving Alcoholic Beverages

Section 1: Every person who negligently serves or causes to be served any alcoholic beverages to an obviously intoxicated person shall be liable for injuries to third persons caused by the acts or omissions of the intoxicated person, even if someone else is also liable.

Section 2: For the purposes of this section, the following definitions shall apply:

a. "every person" means any and all individuals, associations, or corporations, and any and all employees, agents or servants;

b. "serves" means sells, lends, gives, or otherwise furnishes, with or without monetary compensation;

c. "obviously intoxicated person" means an individual whose outward signs of intoxication are plainly recognized by reasonable persons exercising reasonable care under all the circumstances; and

d. "negligently" means failing to exercise reasonable care in doing something, or in not doing something for someone to whom a duty is owed.

For the plaintiff:

1. STATEMENT OF TERRY VICKERS

I am a computer programmer for a local retail chain. On the morning of December 17, I was going home from work. I had to work at night to get time to test some new programs I am working on. I was driving down Eagle Street at about 30 to 35 miles per hour. There was hardly any traffic. At the intersection of Justice and Eagle there is a stop sign for the traffic on Justice. As I proceeded through the intersection, I noticed this Chevy speeding at me from my left side on Justice Street. I slammed on the brakes, but the Chevy never stopped. It was as though the driver never saw me or the stop sign. The Chevy's headlights were not turned on. Just before we crashed, the driver slammed on the brakes and skidded into my car at the door on the driver's side. As I lay on the stretcher after the accident, I saw the driver talking to the police. Later, I was told it was Dana Ivy. Ivy was mumbling badly. Ivy had trouble standing up straight. Ivy was clearly drunk.

A police officer investigated the accident. Ivy was crying at the time and refused to take chemical sobriety tests.

I suffered serious injuries from the accident. I was in the hospital for 10 days and out of work for a month. I later learned that Sandy Hearst served Ivy alcohol when Ivy was already intoxicated and then told Ivy to leave and drive the car. I think the person who is at fault is Sandy Hearst.

For the plaintiff:

2. STATEMENT OF LEE PORTER

I am a senior at Capitol City College and 21 years of age. Although I had seen Sandy Hearst once or twice around campus, I did not really know Sandy. Sandy is the president of one of the big social clubs on campus, The Breaks, so it's hard not to know of someone as popular as Sandy. Sandy gave Dana Ivy and me an invitation to Sandy's party, because Sandy knew we were interested in joining The Breaks.

When we arrived at the party about 11:00 P.M., Sandy greeted us and I said we were late because it was difficult for Dana to find a place to park the car. Sandy said not to worry about that but to "just come in and have a few drinks." Sandy said there were sodas for "non-drinkers if there were any," but that the real partygoers would have the "spiked punch" or beer. Sandy gave Dana some punch and I had a soda. I am active in our college's SADD (Students Against Drunk Driving) chapter and don't believe people should drink, especially when driving.

There was a lot of loud music and over 30 people were drinking, dancing and talking. I saw Dana drink more punch and Sandy was encouraging many people to drink. I didn't see Dana for a while but about 12:30 A.M., I saw a group, including Dana, playing a video game, and Sandy handed all of them beers.

Shortly thereafter, Dana seemed to get into a loud argument with James, a club member, and they almost knocked over the video game. Sandy became quite annoyed and told both of them it was time to leave. Dana grabbed another beer while heading out the door and Sandy took no steps to stop this. I wasn't going to ride home with Dana after all that drinking, so I just stayed behind and decided to get a ride home with someone else.

I was never invited to be a member of The Breaks social club. I'm sure it's because I don't drink or approve of the way Sandy and Dana acted that night.

For the defendant:

1. STATEMENT OF SANDY HEARST

I am a sales representative for the Mutual Opportunity Insurance Company. I am a graduate of Capital City College, and the president of The Breaks, a social club. Our club has a chapter at Capital City College. That's where I met Dana.

One of the purposes of our club is to promote lasting business, professional and social ties between our younger club members at the college and those of us who are making it in the real world. It is hoped that these contacts can translate into job opportunities for our younger members once they have graduated. In order to promote our network, I had a holiday party on December 16 for some members of my club and some of the students like Dana and Lee whom we were considering inviting to become members.

I provided food, soft drinks, beer, and punch. I made the punch myself, with a little rum in one batch, but it was no more intoxicating than rum cake.

I didn't pay attention to Dana at the party because I had a lot of guests, but from what I saw, Dana just talked and acted like any other normal person would at this kind of function. Dana did act pretty lively during the party and at one point was dancing on a table, but Dana has an outgoing personality. Dana wanted Lee to loosen up and enjoy the party but Lee is a real loser — definitely not the kind of person we would want to join The Breaks.

I may have offered Dana a drink or two at the party but no more than I offered anyone else. I didn't force anyone to drink. It was their decision; they are adults. Dana did get out of hand at about 12:30 A.M. I saw Dana get in an argument with James, another club member, over a video game. I got angry and told Dana, "You should leave if you can't act more civilized." I didn't see Dana take any more beer on the way out.

I know that Dana wasn't drunk when leaving the party. As far as I know, I gave Dana some punch on arrival, and perhaps a beer later on. I saw Dana eat a lot of food, too, and that would have cut the effect of any alcohol.

For the defendant:

2. STATEMENT OF DANA U. IVY

I am a senior at Capital City College and 21 years of age. I attended the party at Sandy Hearst's apartment complex on December 16th but I did not have too much to drink and was not drunk when I left.

I remember having a couple of glasses of a very weak punch with some rum in it and maybe two beers. I remember Sandy offering people drinks but I don't think Sandy pushed drinks on me. There was lots of food and I ate some of that as well.

I came with Lee to the party in my car but I don't remember if Sandy knew I had driven. Lee doesn't like drinking as Lee's part of the SADD (Students Against Drunk Driving) chapter at school and was a little unhappy about alcohol being served at the party. Lee is also angry at Sandy because Lee was never invited to join The Breaks club. I was invited to join the month after the party.

I generally had a good time at the party and did some dancing and played video games. At one point I got in an argument with James, another club member, over a video game. Sandy overreacted and told me to leave and I got mad and decided to go. I took a beer on the way out but I wasn't drunk and that beer didn't make me drunk either. Sandy had nothing to do with my taking that beer.

When I got in the car accident it was because I was tired and didn't see the stop sign — not because I was drunk. I was charged with running a stop sign and pled guilty to that charge.

VICKERS v. HEARST, PLAINTIFF'S EXHIBIT 1

ACTIVITY 4D, Handout 2

THE BREAKS

invites you to

"A HOLIDAY PARTY"

December 16
10 P.M. till 2 A.M.
at
8000 Cayuga Avenue
(a short drive from campus)

○ Great Food
○ Drinks
○ Music
○ Video Games
○ More Drinks
○ Dancing

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The authors of *Street Law* have prepared a separate publication on mock trials with detailed lesson plans and classroom-tested mock trials. *The Street Law Mock Trial Kit* is available from Social Studies School Service, 10200 Jefferson Blvd., P.O. Box 802, Culver City, CA 90232-0802.

Association of Trial Lawyers of America. *The Anatomy of a Personal Injury Lawsuit*. ATLA Press (1991). Third Edition. [This book has 17 chapters on the conduct of civil litigation for personal injury plaintiffs, and details many of the concepts of civil lawsuits referred to in this teacher's guide.]

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McCart, S. *Trial by Jury: A Complete Guide to the Jury System*. Chilton Books (1964).

National Institute for Citizen Education in the Law. *Great Trials in American History*. West Publishing Co. (1983). [This narrative provides the testimony of 15 historic American trials. Teacher's Manual available.]

Proffatt, John. *A Treatise on Trial by Jury*. Fred B. Rothman and Co. (1986). [This is a reprint of a book originally published in 1877. Case examples picture aspects of the trial process as it existed in the 1800s. Chapter VII is entitled "Questions of Law and Fact."]

Schaefer, Walter V., and Wayne R. LaFave. *Trial by Jury*. American Bar Association (1968). [This book contains standards for conducting jury trials proposed by the American Bar Association.]

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Starr, Isidore. "Free Press in America: Down with Tyranny," *Update on Law Related Education*, Volume 9, No. 3, Fall 1985. [This update contains the 1735 trial of John Peter Zenger, who was charged with seditious libel. This historic trial can be used by teachers to help bring out the distinction between fact and law. The jury in this case was responsible for determining both. The trial is dramatic as well as informative.]

Van Camp, Julie F. *Teaching About Our Jury System: Our Right to an Impartial Jury of Our Peers*. North Carolina Administrative Office of the Courts (1985). Unit Two.

Wellman, Francis L. *The Art of Cross-Examination*. MacMillan (1924). [This classic in the literature of the law gives examples of cross-examination techniques from a number of famous trials.]

Wellman, Francis L. *Gentlemen of the Jury*. MacMillan (1924). [This is a time-tested account of the workings of trial by jury.]

Woodward, Bob, and Scott Armstrong. *The Brethren*. Avon (1979). [This is a detailed investigative report on the workings of the U.S. Supreme Court during the first years of former Chief Justice Burger's administration.]

OTHER RESOURCES

A number of films and television programs illustrate the trial process and provide good insights into the roles of jurors, judges and attorneys.

FILMS (available on videotape)

Anatomy of a Murder, 1959. [This is the story of a murder trial in rural Michigan.]

Billy Budd, 1962. [This story of the murder court martial of an English sailor on board a British warship in the early 19th century raises fascinating ethical issues.]

Breaker Morant, 1980. [This account of a murder court martial of three Australian soldiers in South Africa during the Boer War raises moral questions about the stress of war on soldiers.]

The Caine Mutiny, 1954. [The action film about World War II in the Pacific includes a famous dramatization of a fictional court-martial of a naval officer.]

Gideon's Trumpet, 1980. [This account of the U.S. Supreme Court decision that granted poor criminal defendants a right to counsel provided by the state depicts the criminal law's operation at its lowest and highest levels.]

The Ox-Bow Incident, 1943. [This dramatization of an informal trial of an accused horse thief by other cowboys in the Far West gives a chilling view of frontier justice.]

QB VII, 1974. [A fictional account of a libel trial in England, this film also raises the question of personal accountability for the Holocaust. The title means "Courtroom Number 7, Court of Queen's Bench."]

To Kill a Mockingbird, 1962. [This is a fictional story about a rape prosecution in a small town in the Deep South.]

Twelve Angry Men, 1957. [This is a riveting dramatization of jury deliberations in a murder trial.]

Witness for the Prosecution, 1957. [This classic mystery includes a murder trial in a British court.]

TV PROGRAMS

Court TV broadcasts of current trials.

Fictional legal dramatizations such as "L.A. Law," "Law and Order," and "Reasonable Doubts."

VERDICT: THE JURY SPEAKS

CONTENTS

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86 The Verdict is *Yours Activity 5A*

88 Jury Instructions *Handout 1*

94 Jury Deliberation Form *Handout 2*

95 Judge's Opinion Form *Handout 3*

96 Bibliography & Other Resources

VERDICT: THE JURY SPEAKS

OBJECTIVES

As a result of this lesson, students should be able to

- Explain the process of reaching a jury verdict;
- Practice a jury deliberation in a hypothetical case;
- Evaluate the process by which the jury deliberates to reach a unanimous verdict;
- Discuss the pros and cons of unanimous verdicts; and
- Contrast the jury deliberation process with decision-making by a judge.

BACKGROUND FOR TEACHERS

Jury deliberations are critical guarantees of our justice system and our democratic system of government. Once instructed by the judge, juries are left on their own to determine the facts of the case, to apply these facts to the law, and to make decisions about the liability, guilt or innocence of the parties. Juries, realizing both their independence and their high responsibility, take their work seriously.

Few jurors come to court knowing how to deliberate and reach a verdict. For that reason, judges instruct them on how to decide the facts of the case. The judge usually reads the instructions to the jury. If the jurors later want clarification about any instruction, part or all of the instructions are repeated.

A typical jury begins its work by electing a foreperson to orchestrate the jury's deliberations. The foreperson will often start by polling the jurors on their preliminary ideas about liability or the guilt or innocence of the parties. This may be done either by secret ballot or by asking the jurors in turn to give their views. Next, the jury will examine the facts to determine whether the elements of the case have been proved or disproved. Jurors will discuss their recollections and review documents and physical evidence presented during the trial. In some jurisdictions, jurors are not permitted to take notes during trial on the theory that a written observation may gain undue weight. This is because jurors are instructed to rely on their **recollection** of the evidence during their deliberations. Other jurisdictions, however, do allow note-taking.

The jurors' recollections must be set out, compared and reconciled. Jurors continue to vote and discuss the evidence until a verdict is reached or there is a **hung jury**, which cannot agree on a verdict. Often the judge will send an undecided jury back for further deliberation. If the jury cannot reach a verdict, the judge declares a **mistrial**. The plaintiff or prosecutor may then choose to retry the case, seek a settlement or plea agreement, or drop or dismiss the case.

It is common for judges, after the jury's verdict has been rendered, to thank jurors for their service to the community. Also, some jurisdictions mail jurors a letter or certificate of appreciation. On page 97, you'll find a certificate which can be presented to your "jurors."

ACTIVITY 5A

MATERIALS
- ○ Jury deliberation form
- ○ Judge's opinion form

Divide the class into as many juries with judges as possible. Use groups of five to seven students. The smaller the jury, the greater the opportunity for each student to participate in the deliberations. Each group should elect a foreperson. Select a number of students to deliberate individually as "judges."

Present a basic scenario upon which all judges and juries can deliberate. Their instructions are to decide whether the defendants depicted in the story are liable for some act or are guilty of a crime. Juries should try to come to a unanimous decision if possible. The scenario can be presented orally or visually, using a videotape of a film or TV show portraying a legal dispute.

Of course the scenario can be presented through a mock trial of the case of *Vickers v. Hearst*, using Handouts 1 and 2 for Activity 4D and Handout 1 for this activity. These handouts give the facts, law, witness statements, a trial exhibit, and jury instructions. This activity can constitute the deliberation phase of the case, or any other case selected for mock trial.

When choosing a scenario, take care that the scene depicts facts that are in dispute, so that the jury can both determine the facts and apply its findings to the law. Whatever scene you choose, develop a brief statement of the applicable law to give students. (See Appendices for sources of help.)

Handout 1 for this activity gives jury instructions that incorporate general guidelines on deliberation adapted from the Maryland Pattern Jury Instructions. It also gives the law that applies to the case of *Vickers v. Hearst*, which should be followed by the students as they deliberate in that case. You may want to obtain the general jury instructions used in your particular state. Of course, if students will be deliberating another case, the instructions must be modified to address that case.

For purposes of clarity or economy of time, the teacher may wish to give the student jury an actual copy of the instructions, as is often done in actual trials.

Give students reasonable time to deliberate. After they have reached a verdict, they should complete the deliberation and opinion forms provided as Handouts 2 and 3. Then reassemble the class and ask the foreperson and judges to read the verdicts aloud. Were different conclusions reached by judges alone and by juries? What facts were important? Which witnesses did they believe? What was the basis for their decision?

Discuss the jury deliberation process. What was it like? Was it easy or hard to come to a unanimous decision? Why would a unanimous decision be required?

Discuss the differences between the jury deliberation process and the individual thinking process used by the judges. Is there a difference? Is that difference beneficial or harmful? To whom? Under what circumstances would a defendant in a criminal case, or a plaintiff in a civil case, choose one over the other?

Move into a discussion of why jury instructions are crucial in instructing the jury on the law of the case, in telling jurors how to apply the law to the case, and in guiding the jury deliberations.

JURY INSTRUCTIONS *

ACTIVITY 5A, Handout 1

By the judge:

Ladies and gentlemen of the jury. You are asked here today to determine whether or not Sandy Hearst is liable to Terry Vickers for injuries sustained by Vickers in a car accident with Dana Ivy. In deciding whether or not Hearst is liable to Vickers, your task is to determine the facts of the case, and then apply these facts to the law.

You must use the law as I explain it to you. However, any comments I may make about the facts are only to help you and you are not required to use them. It is your function and responsibility to decide the facts. You must base your findings only upon the testimony of the witnesses, the exhibits received, and any stipulations of the parties, including any conclusions which may be fairly drawn from that evidence. Opening statements and arguments of the lawyers are not evidence in this case. If your memory of any of the testimony is different from any statement that I might make during the course of these instructions or that counsel might make in argument, you must rely on your own memory.

BURDEN OF PROOF

The plaintiff, Terry Vickers, has the burden of proof in this case. That means Vickers must convince you to find the facts in favor of Vickers's case by the preponderance of the evidence. Preponderance of the evidence does not mean mathematical certainty. It does not mean proof beyond a reasonable doubt, as in a criminal case.

Preponderance of the evidence means evidence that, when weighed against the evidence opposed to it, has the more convincing force. It is a question of quality, not quantity. To establish preponderance of the evidence is to prove that something is more likely so than not so, or more likely true than not true. If, after considering all the evidence, one side is more convincing as to the facts that must be proved than the other side, then that side has met the burden of proof by the preponderance of the evidence. If, however, you believe that the evidence on an issue is evenly balanced, then the plaintiff has not met the burden of proof by the preponderance of the evidence, and you must find in favor of the defendant.

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* Adapted from the Maryland Pattern Jury Instructions.

THE SAFE HIGHWAYS ACT

Our community has a statute, the Safe Highways Act, that specifically makes a social host who serves alcohol to any obviously intoxicated person liable to anyone injured by that person. That statute states:

> Every person who negligently serves or causes to be served any alcoholic beverages to an obviously intoxicated person shall be liable for injuries to third persons caused by the acts or omissions of the intoxicated person, even if someone else is also liable.

Now, what does this law mean with regard to this case? In order to find Hearst liable, you must find by a preponderance of the evidence that Hearst did each and every one of a number of things required by the statute.

First, in order to find Hearst liable, you must find that Hearst served or caused to be served alcoholic beverages to Dana Ivy, who injured Vickers. Under the statute, "serves" means "sells, lends, gives, or otherwise furnishes, with or without monetary compensation." The statute allows a social host to be held liable if the other requirements are met.

Second, in order to find Hearst liable, you must find that Ivy was "obviously intoxicated" before Hearst served Ivy or caused Ivy to be served an alcoholic beverage. Under the statute, an "obviously intoxicated person" means an individual whose outward signs of intoxication are plainly recognized by reasonable persons exercising reasonable care under all the circumstances.

Third, in order to find Hearst liable, you must find that Hearst "negligently" served Ivy or caused Ivy to be served an alcoholic beverage when Ivy was obviously intoxicated. Under the statute, "negligently" means "failing to exercise reasonable care in doing something or in not doing something for someone to whom a duty is owed."

According to this statute, the social host may be liable to the injured third party "even if someone else is also liable." This means that Hearst may be considered liable in addition to Ivy, who has already admitted liability.

JURY INSTRUCTIONS

ISSUES OF FACT

In this case, there is a dispute as to whether Hearst negligently served Ivy or caused Ivy to be served alcoholic beverages when Ivy was obviously intoxicated. That is the fact issue you must decide.

Hearst does not dispute the fact that Vickers's injuries were caused by Ivy. Also, Hearst does not dispute Vickers's claim that the medical bills, lost wages, and pain and suffering warrant a demand for $100,000.

EVIDENCE

In making your findings of fact, you are to rely on the evidence in this case. You alone determine the weight, the effect and the value of the evidence, and the credibility of the witnesses. By evidence, I mean the sworn testimony of the witnesses and the party invitation that has been admitted into evidence. The opening statements and closing arguments of the attorneys are not evidence. They are only intended as these attorneys' views of the evidence.

OBJECTIONS DURING TRIAL

During the course of the trial, it has been my duty to rule on a number of questions of law, such as objections to the admissibility of evidence, the form of questions, and other legal points. You should not draw any conclusions from these rulings either as to the merits of the case, or as to my views regarding any witness or the case itself.

It is the duty of a lawyer to make all objections which are proper in law. You should not be influenced by the fact that objections were made, no matter how the court may have ruled on them. You must disregard any evidence which I have ordered stricken.

CREDIBILITY OF WITNESSES

You are the sole judges of whether a witness should be believed. In making this decision, you may apply your own common sense and everyday experiences.

In determining whether a witness should be believed, you should carefully judge all the testimony and evidence and the circumstances under which each witness has testified. You should consider the following:

- The witness's behavior on the stand and way of testifying;
- The witness's intelligence;
- Whether the witness appeared to be telling the truth;
- The witness's opportunity to see or hear the things about which testimony was given;
- The accuracy of the witness's memory;
- Whether the witness had a motive not to tell the truth;
- Whether the witness had an interest in the outcome of the case;
- Whether the witness's testimony was consistent;
- Whether the witness's testimony was supported or contradicted by other evidence; and
- Whether and the extent to which the witness's testimony in the court differed from the statements made during a pretrial deposition.

You need not believe any witness even though the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

DUTY OF JURORS

You must consider and decide this case fairly and impartially. All persons, including corporations, stand equal before the law and are entitled to the same treatment under the law. You should not be prejudiced for or against a person because of that person's race, color, religion, political or social views, wealth or poverty. You should not even consider such matters. The same is true as to prejudice, for or against, and sympathy for any party.

You should not conclude from any conduct or words of mine that I favor one party or another, or believe or disbelieve the testimony of any witness. You, not I, are the sole judges of the believability of witnesses and the weight of the evidence and you must not be influenced in any way by my conduct during the course of the trial.

You will now listen to the final arguments of the lawyers who have the right to discuss the evidence and the law.

> *[After the final arguments are concluded, the judge should explain any limitations that may be necessary because of limited time or a large number of jurors. The following paragraph, or part of it, may be used or modified as circumstances dictate.]*

Ladies and gentlemen of the jury, you are now going to be divided into small groups, or juries, of from five to seven jurors. Please try to have an odd number of jurors in your assigned group, although this is not absolutely necessary. The groups are that size not because juries are normally that size — juries are frequently comprised of 12 jurors, although in recent years smaller juries have been used for many trials. It will be easier for you to work in smaller groups. We want each group to elect a foreperson, who will stand to report the verdict at the end of deliberations. You will have 10 minutes for deliberations.

When you deliberate, I would like you, first, to discuss the facts according to these jury instructions: Was Ivy served alcohol by Hearst? Was Ivy "obviously intoxicated" at that time? If so, did Hearst act negligently? Then vote to decide whether or not Sandy Hearst should be held liable to Terry Vickers.

[Again, if time is limited, the following paragraph may be inserted.]

Unlike the usual practice of juries, we are not asking you to reach a unanimous decision here today. We do not have the time needed to reach a consensus if some of you disagree on the verdict. Today you may decide the case by a majority vote of persons in your small jury.

[The final paragraphs should be read in every mock trial.]

For today's exercise, please try not to reach an "undecided" verdict; make every effort to reach a verdict for one party or the other. When deliberating, please do so enthusiastically, but be mindful of your neighbors.

Your verdict must be based entirely upon the evidence you have heard and seen in the courtroom and the law as given in these instructions. It cannot be based on anything else.

Jurors will now deliberate.

JURY DELIBERATION FORM

ACTIVITY 5A, Handout 2

Jury Number: ______

Foreperson: ________________

Jury Members:

1.__________________________ 7.__________________________

2.__________________________ 8.__________________________

3.__________________________ 9.__________________________

4.__________________________ 10.__________________________

5.__________________________ 11.__________________________

6.__________________________ 12.__________________________

Verdict:

____ Liable/Guilty

____ Not Liable/Not Guilty

Basis for Decision:

What testimony, evidence and/or exhibits were most persuasive?

JUDGE'S OPINION FORM

ACTIVITY 5A, Handout 3

Judge: ____________________

Verdict:

____ Liable/Guilty

____ Not Liable/Not Guilty

Basis for Decision:

What testimony, evidence and/or exhibits were most persuasive?

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BIBLIOGRAPHY

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Simon, Rita James. *The Jury System in America: A Critical Overview.* Sage Publications (1975). [This book is a collection of essays written by various authors about the American jury system. Chapters 4 and 5 present studies of factors that may influence jury verdicts. Chapter 4 deals with "Selective Characteristics of Jurors and Litigants," and Chapter 5 looks at "The Impact of Pretrial Publicity on Jurors' Verdicts."]

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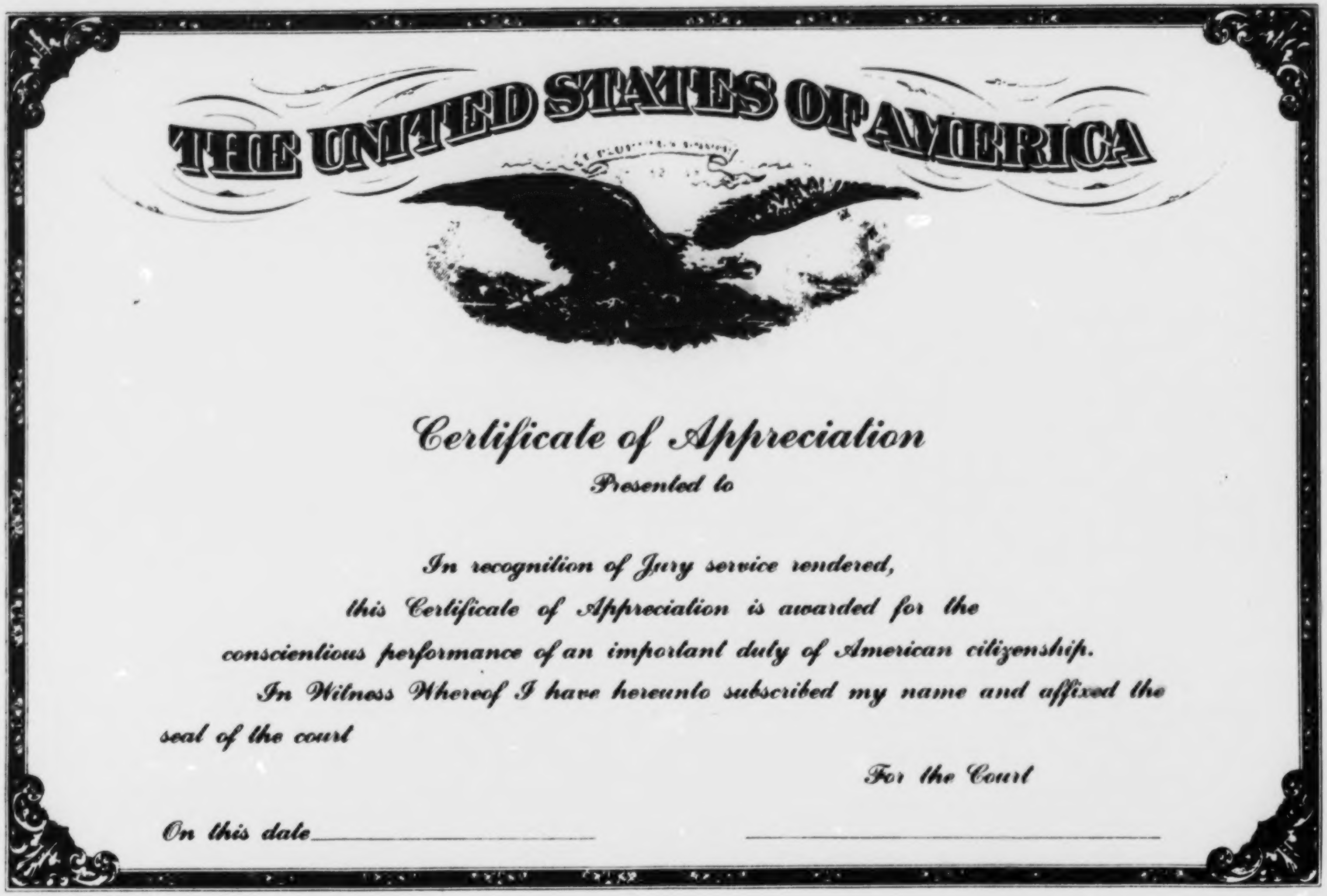
Wishman, Seymour. *Anatomy of a Jury: The System on Trial.* Viking Penguin (1987).

OTHER RESOURCES

Many possibilities exist for illustrating the jury's deliberation process. Videotapes of films and television programs can be used to demonstrate the process and the interesting interactions that often occur among jurors. *Twelve Angry Men* provides a particularly compelling example. See page 82 for other suggestions.



THE UNITED STATES OF AMERICA

Certificate of Appreciation

Presented to

In recognition of Jury service rendered,
this Certificate of Appreciation is awarded for the
conscientious performance of an important duty of American citizenship.

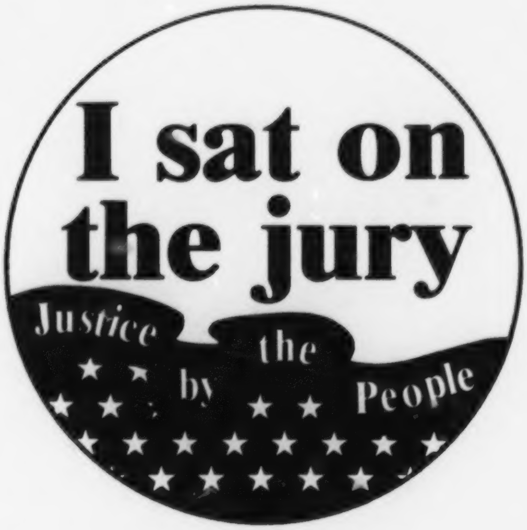
In Witness Whereof I have hereunto subscribed my name and affixed the seal of the court

For the Court

*On this date*____________________ ____________________________

This Juror Appreciation Certificate is an adaptation of one used by many U.S. District Courts.

BUTTON FOR "JURORS"



WHEN JUSTICE IS UP TO YOU

an exciting opportunity to experience
America's hard-won guarantee of
the right to trial by jury

Today's trial is about drinking and driving. It questions the responsibility of those serving liquor, not just drinking it.

The case concerns Sandy Hearst, a sales representative and president of "The Breaks," a social club. On December 16, Sandy hosted a holiday party. Liquor was served. Early the next morning, Dana U. Ivy, a 21-year-old college student, was involved in a two-car collision while driving home from the party. Dana collided with Terry Vickers, a computer programmer. Terry was hospitalized with a broken leg, bruised ribs and other injuries.

Terry and Dana have reached an out-of-court settlement. But Terry is now suing Sandy, charging that, as host, Sandy served liquor to Dana when Dana was already intoxicated, an illegal act in some states. Both Dana and Sandy deny that Dana was drunk.

○ Is Sandy guilty of contributing to Terry's accident? Should Sandy share liability? Why or why not? (Use this space for notes.)

○ What evidence or testimony is the most persuasive? Explain why? (Use this space for notes.)

As jurors, the verdict is yours!

PROGRAM

Introduction

Richard Roe
Professor of Law, Georgetown University Law Center
Project Director, D.C. Street Law Project

Welcome

Judith Areen
Dean, Georgetown University Law Center

Bob Gibbins
President, Assn. of Trial Lawyers of America

Court Called to Order . . . All Rise for Judge

Luciana Burroughs, Bailiff

The Honorable Ricardo Urbina, Judge of the Superior Court of the District of Columbia presiding

Trial of Vickers v. Hearst

Shareese Thompson, Plaintiff
Celia Holland, Witness for Plaintiff
Richard Hailey, Esq., Counsel for Plaintiff

Brian Settles, Defendant
TeAnne Coleman, Witness for Defendant
Roxanne B. Conlin, Esq., Counsel for Defendant

Charge to Jury

Jury Deliberations

Your Verdict

All Rise for Judge

Court Recesses

SUGGESTED TIME FRAMES

2-3 min.

2 min.

Opening Statement
3 min. each side
Direct Examination (4 witnesses)
5 min. each witness
Cross Examination (4 witnesses)
5 min. each witness
Closing Argument
3 min. each side

10-12 min.

Program used at debut of WHEN JUSTICE IS UP TO YOU, Georgetown University Law Center, Washington, DC.

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The **Association of Trial Lawyers of America (ATLA)** safeguards victims' rights, strengthens the civil justice system through education, promotes injury prevention, and fosters the disclosure of information critical to the health and safety of the American public. Established in 1946, the Association's initiatives extend across the U.S. to Canada and abroad. Offices are located at 1050 31st Street, N.W., Washington, D.C. 20007. Executive Director is Thomas H. Henderson, Jr.

The **National Institute for Citizen Education in the Law (NICEL)** evolved from a Georgetown University Law Center program in which law students teach practical law courses to the public. Created in 1972 to promote increased public opportunities to learn about the U.S. legal system, the organization now develops curricula and textbooks, trains teachers, and provides technical assistance for law-related education programs in the U.S. and abroad. Offices are located at 711 G Street, S.E., Washington, D.C. 20003. Co-directors are Jason Newman and Edward L. O'Brien.

The **D.C. Street Law Project**, launched in 1971, generates opportunities for law students to share their interests and expertise in D.C. public schools and correctional facilities. Topics include the criminal and civil justice systems, and the structure and operation of the courts. Offices are located at Georgetown University Law Center, Suite 330, 111 F Street, N.W., Washington, D.C. 20001. Director is Professor Richard Roe.

When Justice Is Up To You was developed by Richard Roe, James Rooks, Madelyn Appelbaum, and Lee Arbetman. Special thanks to Aggie Alvez, Justin Brooks, Jim Buchanan, Cynthia Caporizzo, Ruth Gutstein, Keisha Jones, Ellen Marrus, Eileen Mosley, Loretta Moss, Ed O'Brien, Eleanor Song, and Judy Zimmer.

Design by Barbara M. Sheppard.